(17,976.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 491.

THE MICHIGAN SUGAR COMPANY, PLAINTIFF IN ERROR,

vs.

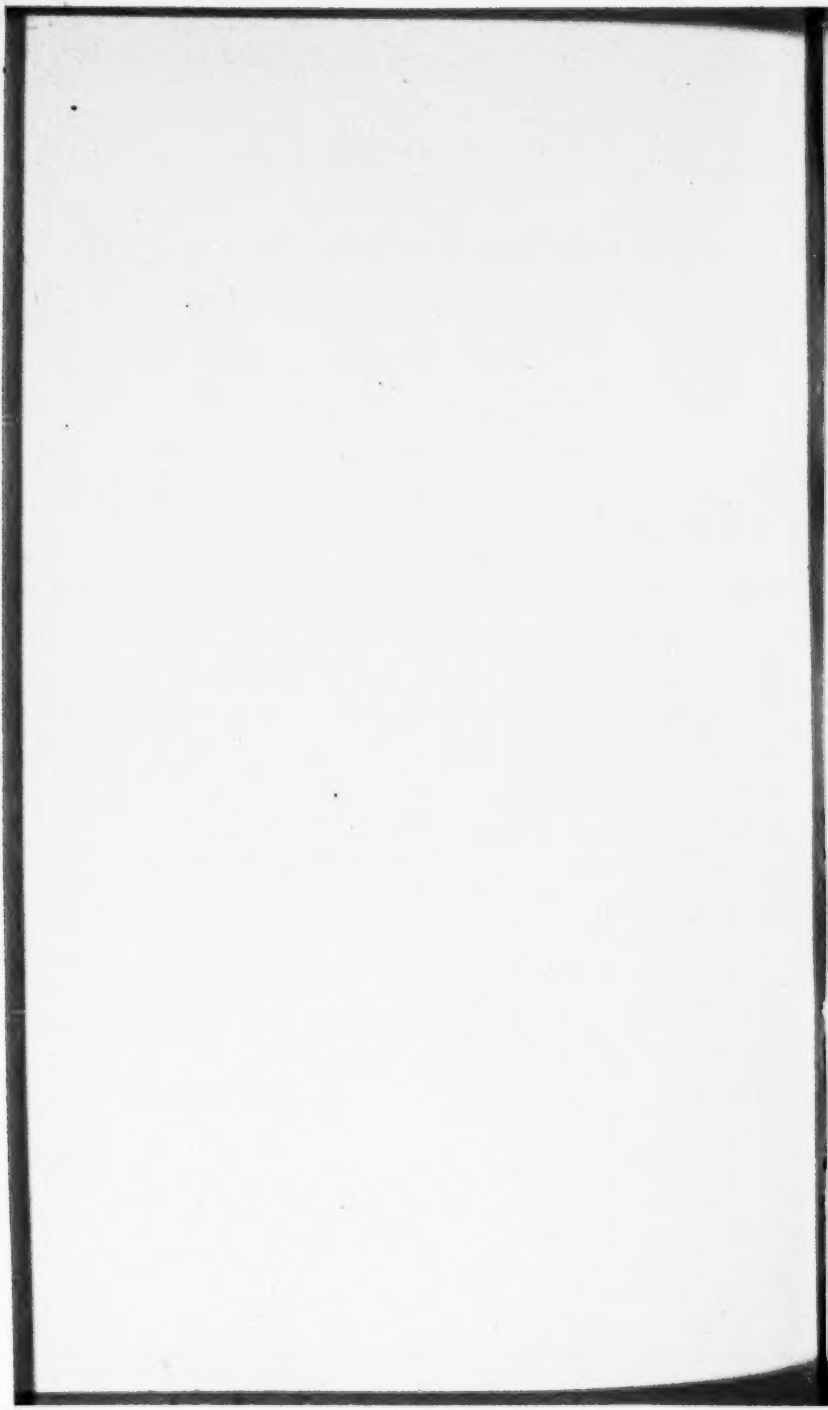
ROSCOE D. DIX, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

INDEX.

	Original.	Print.
Petition for writ of mandamus	1	1
Statement A—Statement showing expenses for years 1899 and 1900, &c	6	4
Statement B—Statement showing continuing annual appropriations by previous legislatures which contain no tax clauses	7	5
Statement C—Statement showing disbursements, &c	8	6
Statement D—Statement showing receipts, &c	9	7
Recapitulation of Statements A, B, C, and D	10	8
Order to show cause	13	10
Answer to petition	14	10
Opinion	18	13
Order denying petition	24	18
Petition for writ of error	25	18
Assignment of error	26	19
Bond	28	20
Citation	30	21
Writ of error and return	31	22
Docket entries	32	23
Clerk's certificate	33	23

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 12, 1901.



1 Supreme Court.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

To the supreme court of Michigan:

Your petitioner, The Michigan Sugar Company, the above-named relator, respectfully represents that—

1st. It is a corporation organized and existing under the laws of the State of Michigan, with its principal office at Bay City, in said State; that it was organized on, to wit, the ninth day of December, A. D. 1897, for the purpose, among other things, of engaging in the manufacture in the State of Michigan of sugar from sugar beets grown in said State, and it has since the date of its organization been continuously engaged in that business and no other.

2nd. It was organized with a capital stock of $200,000.00, all of which was paid in, and during the years A. D. 1898–'99 it erected, perfected, and completed a sugar factory at the village of Essexville, in the State of Michigan, at a total cost of $288,310.99, *that* said company being organized, the capital stock thereof subscribed and paid in, and the said factory erected at the cost above mentioned (such additional cost having been provided for by borrowing capital on the faith and credit of the corporation and its property) in
2 reliance upon and because of the adoption by the legislature of the State of Michigan of act No. 48 of the Public Acts of 1897, being an act entitled "An act to provide for the encouragement of the manufacture of beet sugar and to provide a compensation therefor and to make an appropriation therefor."

3rd. It commenced its first campaign as soon as possible after the completion of its factory, and on, to wit, during the month of October, A. D. 1898, and the said first campaign closed when the crop of sugar beets raised during the year 1898 was exhausted, and during, to wit, the month of February, A. D. 1899; that all contracts for the purchase of beets were made with the farmers of the State of Michigan, and all sugar manufactured was from sugar beets raised within said State during the year 1898, the contracts used being in form complying with the provisions of said act 48 of the Public Acts of 1897. All sugar beets received during the said campaign of 1898–'99 were weighed, paid for, handled, and manufactured in accordance with the terms and provisions of said act, and it has not only complied with the provisions of said act in all respects, but has furnished proof of such compliance to the commissioner of the State land office.

4th. After the commencement of the campaign of 1898–'99 it presented its claim under date of December 2nd for a bounty on 1,422,591 pounds of sugar amounting to the sum of $14,225.91, and under date of December 29th for a bounty on 1,422,516 pounds of

sugar amounting to $14,225.16; which said claims were approved by the commissioner of the State land office, and for which moneys the auditor general drew his warrants upon the State treasury; which said warrants were paid; that on, to wit, the 28th day of June, A. D. 1899, it presented its claim under date of January 31st, 1899, for a bounty on 1,636,149 pounds of sugar amounting to $13,631.49, and under date of February 20th, 1899, for a
3 bounty on 1,063,150 pounds of sugar amounting to $10,631.50, both of which claims for sugar manufactured, as stated, were presented to and approved by the commissioner of the State land office; which said claims and the approval thereof by the said commissioner are in the words and figures following, to wit:

State of Michigan to the Michigan Sugar Company, Dr.

Date.		
1899.		
Jan. 31.	To bounty on 1,363,149 pounds of sugar, manufactured under the provisions of act 48, Laws of 1897, quantity and quality verified in statements filed with the commissioner of the State land office	$13,631.49

STATE OF MICHIGAN, } ss:
Bay County, }

Henry S. Raymond, secretary of the Michigan Sugar Company, being duly sworn, says that the above is a true and correct statement of bounty due; that this claim has not heretofore, nor any part thereof, been allowed or paid.

(S'g'd). HENRY S. RAYMOND,
Secretary of the Michigan Sugar Co.

Sworn to and subscribed before me this thirty-first day of January, A. D. 1899.

SAMUEL P. CRANAGE,
Notary Public, Bay County, Michigan.

I hereby certify that I have verified the above claim for bounty by sworn statements and returns now on file in my office, and the amount thereof is approved at the sum of thirteen thousand six hundred thirty-one and $\frac{49}{100}$ dollars.

Dated June 28, 1899.

WM. A. FRENCH,
Commissioner of State Land Office.

$——.

Received of the auditor general a warrant upon the treasurer of the State of Michigan for the sum of —— dollars and —— cents, in full of the above account.

Date: ——.

(Signed) —— ——.

4 State of Michigan to the Michigan Sugar Company, Dr.

Date.		
1899.		
Feb. 20.	To bounty on 1,063,150 pounds of sugar, manufactured under the provisions of act 48, Laws of 1897, quantity and quality verified in statements filed with the commissioner of the State land office	$10,631.50

STATE OF MICHIGAN, } ss:
Bay County, }

Henry S. Raymond, secretary of the Michigan Sugar Company, being duly sworn, says that the above is a true and correct statement of bounty due; that this claim has not heretofore, nor any part of it, been allowed or paid.

HENRY S. RAYMOND,
Secretary of the Michigan Sugar Company.

Subscribed and sworn to before me this second day of March, A. D. 1899.

SAMUEL P. CRANAGE,
Notary Public, Bay County, Michigan.

I hereby certify that I have verified the above claim for bounty by sworn statements and returns now on file in my office, and the amount thereof is approved at the sum of ten thousand six hundred thirty-one and $\frac{50}{100}$ dollars.

Dated June 28th, 1899.

WM. A. FRENCH,
Commissioner of the State Land Office.

$——.

Received of the auditor general a warrant upon the treasurer of the State of Michigan for the sum of —— dollars and —— cents, in full for the above account.

Date: ——.

(Signed) —— ——.

That the manufacture of sugar upon which said bounty was claimed and for which said bills were presented was in all respects, ways, and manners in strict accordance with the provisions
5 of act No. 48 of the Public Acts of 1897.

5th. That afterwards the claims for bounty, true copies of which are given above, were presented to Roscoe D. Dix, auditor general of the State of Michigan, and demand made upon him for warrant upon the treasurer of the State of Michigan for the sums of money so due and owing, and the said auditor general declined to issue his warrant therefor, and again, and on, to wit, the 7th day of December, A. D. 1899, the said claims for bounty under dates of January 31st and February 20th, 1899, above referred to, were again called to the attention and presented to the auditor general of the

State of Michigan, and demand made upon him for his warrant upon the treasurer of the State of Michigan for the sums, and the said auditor general again declined to issue or deliver such warrant or warrants, and stated that "under the advice of the attorney general he must withhold the warrants requested until the courts had declared that such warrants should be issued," and the said auditor general still declines to issue his warrant until such direction is given.

6th. That the legislature of 1889 at its general session held in pursuance of the constitution and laws of the State of Michigan, and prior to the 23rd day of June, A. D. 1899, had under consideration a bill, which was adopted and became act No. 263 of the Public Acts of 1899, entitled "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government, salaries of the State officers, expenses of the State departments, and expenses of the legislature for the years eighteen hundred ninety-nine and nineteen hundred;" which said bill was referred to the committee on ways and means of the said legislature and reported by the said committee, which recommended its adoption, and in support thereof the said ways and means committee procured and caused to be made a statement showing the different appropriations for and on account of which it was necessary said bill should be adopted and become an
6 act of said legislature; which said statement was submitted to and read to the legislature, as your petitioner is informed and believes, by the chairman of the committee on ways and means of the house and by the committee to which said bill was referred in the senate; which said statement is in words and figures following, to wit:

STATEMENT "A,"

Showing estimated expenses for the purposes named for the years 1899 and 1900; also several deficiency items.

	1899.	1900.
Salaries of State officers	$75,000.00	$75,000.00
" " extra clerks	90,000.00	90,000.00
" " judiciary	150,000.00	150,000.00
Expenses of "	8,000.00	8,000.00
" " legislature	160,000.00	
Expenses of legislature (extra session 1898)	21,140.00	
Expenses of boards of State institutions.	12,000.00	12,000.00
Agent State public school and attendant.	2,500.00	2,500.00
" Industrial School for Boys	700.00	700.00
" " Home for Girls	1,000.00	1,000.00
Game and fish warden	3,200.00	3,200.00
Deputy game and fish warden	4,200.00	4,200.00
Live stock commission	3,500.00	3,500.00
Board of visitors to State institutions	250.00	250.00
Advisory board in the matter of pardons.	5,500.00	5,500.00

Expenses of conveying convicts to State prison	4,500.00	4,500.00
Expenses of conveying convicts to house cor.	5,000.00	5,000.00
Expenses of conveying convicts to branch prison	2,000.00	2,000.00
Apprehension of escaped convicts	800.00	800.00
Transportation of children to and from State public school	2,500.00	2,500.00
Transportation of children to industrial school and industrial home	7,000.00	7,000.00
Transportation of convicts to Detroit house of correction	800.00	800.00
Transferring convicts between prisons	800.00	800.00
Support of female convicts det. house of correction	2,500.00	2,500.00
Care of juvenile offenders	10,000.00	10,000.00
Medical treatment of children	600.00	600.00
Interest and fees collected for counties and paid to them by State	150,000.00	150,000.00
Uncollected State tax	75,000.00	75,000.00
Fire and accident contingent fund	30,952.16	
Awards of board of State auditors.	230,000.00	230,000.00
7 Costs of suits	12,000.00	12,000.00
Coroner's fees	3,000.00	3,000.00
Wolf bounties	500.00	500.00
Lynx "	1,000.00	1,000.00
Expenses State banking department	20,000.00	20,000.00
" " board of auditors	2,500.00	2,500.00
Fugitives from justice	500.00	500.00
Beet-sugar bounty, excess of earned bounty over tax	42,714.06	
Sundry disbursements	20,000.00	20,000.00
	$1,161,906.22	$907,100.00

STATEMENT "B,"

Showing continuing annual appropriations by previous legislatures which contain no tax clauses.

	1899.	1900.
Teachers' institutes	1,800.00	1,800.00
Soldiers' and sailors' monument	100.00	100.00
Geological survey	8,000.00	8,000.00
State board of health	4,000.00	4,000.00
State board of charities and corrections	5,000.00	5,000.00
University-Homeo. college	6,000.00	6,000.00
Relief supreme court	4,000.00	4,000.00

Officers' salaries—Eastern asylum	12,000.00	12,000.00
" " Northern "	12,000.00	12,000.00
" " Michigan "	12,000.00	12,000.00
" " U. P. hospital	8,000.00	8,000.00
" " State asylum	4,500.00	4,500.00
Bureau of labor and inds. statistics	8,000.00	8,000.00
Commissioner of mineral "	2,500.00	2,500.00
Factory inspection	12,000.00	12,000.00
Riverside Cemetery trust funds	12.00	12.00
Footings	$99,912.00	$99,912.00

8 STATEMENT "C,"

Showing the disbursements and settlements authorized by present legislature by acts and resolutions containing no clauses for the following purposes, and in some cases, the increase in standing appropriations, the amount authorized by previous legislatures being found in statement "B."

	1899.	1900.
Michigan Pioneer Association	1,500.00	1,500.00
Permanent forestry commission	2,000.00	2,000.00
Claim of Wm. T. Densmore	180.00	180.00
Relief of compiler of compiled laws	800.00	
" " Thomas Allen	120.00	120.00
History of Michigan organizations at Chickamauga and Chattanooga, etc	3,000.00	
Claim of George J. La Du	2,000.00	
Teachers' institutes (increase)	1,200.00	1,200.00
Factory inspection "	3,000.00	3,000.00
Inspection of coal mines	1,500.00	1,500.00
Printing geological reports	4,000.00	
Claim of George W. Crump	2,000.00	
Relief of John Henry Bartrem	2,000.00	
" " Louis Schmidt	1,500.00	
Return and burial of deceased soldiers from Cuba, Porto Rico, etc	2,000.00	
House bill # 219, day School for Deaf	5,000.00	10,000.00
Senate bill # 287, purchase of records of U. S. Supreme Court	6,000.00	
Senate J. R., # 17, relief of Ben Stressen Reuter	300.00	300.00
Experiment-station bulletins	4,000.00	4,000.00
Beet sugar	50,000.00	150,000.00
Footings	$92,100.00	$173,800.00

9 STATEMENT "D,"

Showing estimated receipts which will be credited to the general fund and become applicable to the expenses of the Government; also the portion of the current expense appropriation for the six months ending June thirty, which is included in the tax clauses for the institutions in 1899 by classes and items, as follows:

Estimated receipts.	1899.	1900.
Educational lands	$60,000.00	$60,000.00
Salt spring, State building and asylum lands	600.00	600.00
Session laws and reports	5,400.00	5,400.00
Interest on surplus funds	25,000.00	25,000.00
Rents	1,200.00	1,200.00
Fees, commissioner of deeds	50.00	50.00
" peddlers' licenses	2,000.00	2,000.00
" notaries public	2,200.00	2,200.00
" State departments	25,000.00	25,000.00
" " oil inspector	12,000.00	12,000.00
Town plats	100.00	100.00
U. S. support of soldiers	40,000.00	40,000.00
State banking department	10,000.00	10,000.00
Sundry receipts from sources not mentioned in present estimate	15,000.00	15,000.00
	$198,550.00	$198,550.00

Tax Levied in 1899 *for Current Expenses of Fractional Year.*

Institutions.	Amounts.
School for Blind	7,028.75
College of Mines	10,927.50
School for Deaf	18,812.50
Soldiers' Home	27,750.00
Home for Feeble-minded	13,500.00
Industrial Home for Girls	11,411.75
" School for Boys	15,000.00
State public school	7,750.00
Central normal school	6,250.00
State normal college	16,575.00
" library	3,750.00
	$138,765.50

10 *Recapitulation of Statements "A," "B," and "C" and "D."*

	1899.	1900.
From statement "A"	$1,161,906.22	$907,100.00
" " "B"	99,912.00	99,912.00
" " "C"	92,100.00	173,800.00
	$1,353,918.22	$1,180,812.00
Deduct " "D"	337,315.50	198,550.00
	$1,016,602.72	$982,262.00

and the original thereof is now on file in the office of the State accountant.

7th. That your petitioner only was engaged in the business of manufacturing sugar from sugar beets during the campaign of 1898–'99 and from sugar beets raised in the State of Michigan during the year A. D. 1898, no other factory in said State having been constructed or having actually manufactured sugar from sugar beets grown during the said year of 1898 or manufactured during the campaign of 1898–'99; that the sum of $10,000.00 was appropriated from the general fund by the said act No. 48 of the Public Acts of 1897, to be known as the "Beet-sugar fund," and the auditor general was authorized to and did levy a tax of $5,000.00 for the year 1897 and the year 1898 to reimburse the treasury for the sum thus appropriated and the excess of bounty for the years 1897 and 1898, so far as the same were presented, were paid out of the general fund; that at the time of the consideration of said act No. 263 of the Public Acts of 1899 your petitioner had presented claims for bounty earned aggregating $52,714.06, and the taxes for the years 1897 and 1898, amounting to $10,000.00, had been paid in so that the excess of bounty earned over tax was $42,714.06, all of which has been earned by
11 your petitioner, and $18,451.07 had been paid in addition to the $10,000.00 of taxes so collected, and there was due to your petitioner for bounty earned and for which claims approved, as aforesaid, had been presented the sum of $24,262.99, and the said sums together aggregate $42,714.06, and in the said statement so used, as aforesaid, showing the purposes for which the said act No. 263 of the Public Acts of 1899 provided for was the item "beet sugar bounty"—excess of earned bounty over tax, $42,714.06—and the said amount so due, as aforesaid, for bounty earned was under the provisions of the said act levied and collected, and under the provisions of both of said acts the moneys so owing to your petitioner for the bounty so earned by it is now in the treasury of the State of Michigan duly appropriated and subject to the warrant or order of the auditor general of the State of Michigan, and the said auditor general is required, under the provisions of said acts, to draw his warrants therefor in favor of your petitioner for the two amounts above mentioned, aggregating the sum of $24,262.99, and such tax had been collected and appropriation made, said moneys were subject to said order and warrant, and it was the duty of said auditor

general to draw such order and warrant at the time application was made to him therefor, as hereinbefore stated, and it was and still is his duty so to do; but notwithstanding said auditor general continues to refuse to deliver his order or warrant to your petitioner until so directed to do by this honorable court.

Your petitioner therefore prays:

(A.) That Roscoe D. Dix, auditor general of the State of Michigan, may be required by a peremptory writ of mandamus or order of this honorable court to draw his warrant or warrants upon the treasury of the State of Michigan in favor of your petitioner for the amounts so due to it for bounty earned for beet sugar manufactured from sugar beets raised in the year 1898, aggregating the sum of $24,262.99; and

12 (B.) That the said Roscoe D. Dix, auditor general of the State of Michigan, shall be required to show cause at a time to be fixed by this honorable court why such peremptory mandamus should not be allowed to your petitioner.

MICHIGAN SUGAR COMPANY,
By THOMAS CRANAGE, *President.*

T. A. E. & J. C. WEADOCK,
Attorneys for Petitioner.

STATE OF MICHIGAN, } ss:
County of Bay, }

Thomas Cranage, being duly sworn, deposes and says that he is president of the Michigan Sugar Company and makes this affidavit for and on its behalf; that he has read the foregoing petition by him in the name of the said Michigan Sugar Company subscribed and knows the contents thereof; that the same is true except as to those matters stated to be upon information and belief, and as to those matters he believes it to be true.

THOMAS CRANAGE.

Subscribed and sworn to before me this 8th day of May, 1900.
LUTHER G. BECKWITH,
Notary Public, Bay County, Michigan.

STATE OF MICHIGAN, } ss:
County of Bay, }

George M. Lusk, being duly sworn, deposes and says that he is a representative in the State legislature from the second legislative district of Bay county, and during the session of the legislature beginning in January, 1899, he was chairman of the ways and means committee; that he has read the sixth paragraph of the foregoing petition and knows the contents thereof, and that the same is true.

GEO. L. LUSK.

Subscribed and sworn to before me this 8th day of May, 1900.
LUTHER G. BECKWITH,
Notary Public, Bay County, Michigan.

(Endorsed:) Filed May 15, 1900. Chas. C. Hopkins, clerk supreme court.

13 At a session of the supreme court of the State of Michigan, held at the court-room, in the capitol, in the city of Lansing, on the eighteenth day of May, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

On reading and filing the petition and accompanying affidavits of the relator above named and on motion of T. A. E. and J. C. Weadock, attorneys for relator, ordered that said respondent, said auditor general, do show cause to this court, on the fifth day of June next, why a peremptory mandamus should not be issued out of and under the seal of this court to compel him, the said auditor general of the State of Michigan, to forthwith draw his warrant or warrants upon the treasury of the State of Michigan in favor of relator for the amounts due to it for bounty earned for beet sugar manufactured from sugar beets raised in the year 1898, aggregating the sum of $24,262.99.

And it is further ordered that a certified copy of this order, together with a copy of the petition and affidavits aforesaid, and upon which this order is founded, be served on the said respondent at least ten days before the time herein limited for showing cause.

14 STATE OF MICHIGAN:

Supreme Court.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

The answer of Roscoe D. Dix, auditor general of the State of Michigan, to the petition of The Michigan Sugar Company, a corporation, relator

I.

The facts alleged in the first paragraph of relator's petition are admitted.

II.

The following facts set forth in the second paragraph or relator's petition are admitted, viz., the capitalization of said company; the erection and completion of its sugar factory, and the cost of the

same. Respondent neither admits nor denies that said company was organized and its capital subscribed and paid in and its factory erected and additional capital borrowed in reliance upon and because of the adoption of act No. 48 of the Public Acts of 1897, but avers as to the portion of said paragraph containing said allegations that it is immaterial, and as to such allegations claims the benefit of a demurrer.

III.

He admits the facts alleged in the third paragraph of relator's petition.

15

IV.

He admits the facts alleged in the fourth paragraph or relator's petition.

V.

He admits the facts alleged in the fifth paragraph of relator's petition.

VI.

As to the sixth paragraph of relator's petition, he admits that the legislature of Michigan prior to June 23rd, 1899, had under consideration the bill which became on its passage act No. 263 of the Public Acts of 1899. He demurs to that portion of said paragraph containing the allegation regarding the estimates that it is alleged were submitted to the legislature and considered while said bill was under discussion, and for grounds of demurrer alleges:

1. That it is incompetent to contradict or vary the terms of said act by the evidence set forth in said paragraph, viz., by the affidavit of a member of said house.

2. That said act by its terms levies a tax to supply revenue to meet appropriations of the legislature otherwise made and is not in itself an appropriation bill, and the fact that estimates were submitted to guide the legislature in determining the amount of the tax to be levied under said act would not constitute a lawful appropriation upon which the moneys to be realized from the tax levied under said act could be drawn from the State treasury.

VII.

He admits the following facts alleged in the seventh paragraph of relator's petition, viz., that relator was the only concern engaged in the manufacture of sugar in the State of Michigan during the campaign of 1898–'9. He admits that the auditor general levied taxes under act No. 48, Public Acts of 1897, for the years

16

1897 and 1898, and admits that relator has received from the State treasury $10,000 and $18,451.07 in addition, as alleged in said paragraph, but he denies that said claims were presented for $24,262.99 before act No. 263, Public Acts of 1899, was passed and while the same was under consideration, but avers, as stated in said petition, in paragraph four, that said claims were not presented to the auditor general until June 28th, 1899.

He demurs to the allegation that the aggregate sum of $42,714.06

appeared in the statement alleged to have been preparred and considered while the legislature was acting upon act No. 263, above mentioned, for the reasons of demurrer assigned in the preceding paragraph of this answer.

He admits that the full amount provided for in act No. 263 of the Public Acts of 1899 was levied and is now in the State treasury, except such amounts as have been drawn therefrom on the legal warrants of the auditor general, but denies that any of the amount so raised and in the State treasury is subject to the warrant of the auditor general or has been appropriated to pay the sugar-bounty claims set out in relator's petition.

And for further answer, to show cause why the mandamus prayed for be not granted, this respondent avers:

1. That under the constitution and laws of this State he is not authorized to issue his warrant upon the treasurer of the State, except in pursuance of appropriation made by law.

2. Act No. 48 of the Public Acts of 1897 made no appropriation to pay a bounty on sugar manufactured after December 31st, 1898, and it nowhere appears in said petition or the certificates and vouchers presented to the auditor general that the claim of relator is for sugar manufactured prior to January 1st, 1899.

3. That if said act No. 48, Public Acts of 1897, was an appropriation of the moneys of the State, it was an appropriation for private purposes, and under article IV, sec. 45, said act required for
17 its legal enactment the assent of two-thirds of the members elected to each house of the legislature, and that said act received on its final passage in the house of representatives only fifty-seven votes, less than two-thirds of all the members-elect of said house, and that said act was in consequence not enacted in accordance with the terms of the constitution and is void, and no moneys can be drawn from the treasury of the State under any authority conferred by it.

4. Act No. 263, Public Acts of 1899, does not make an appropriation to pay sugar bounties, and, if it was contemplated by the legislature that a portion of the taxes levied in pursuance of said act should be appropriated for such purposes, it was beyond the power of the legislature so to do, as, under the constitution of the State of Michigan, the legislature is limited in its power to impose taxes providing for the estimated expense of the State government, and to purposes that are in their nature public; and this respondent avers that it is not within the power of the legislature to impose a tax to pay bounties to aid private commercial ventures, and hence that act No. 48, Public Acts of 1897, is void, and act No. 263, Public Acts of 1899, would be void in case there was a tax included for said purpose, at least, to the extent of said tax.

Wherefore respondent prays judgment of the court that said petition be denied.

ROSCOE D. DIX,
Auditor General of the State of Michigan.

HORACE M. OREN,
Attorney General, for Respondent.

C. D. JOSLYN, *Of Counsel.*

(Endorsed:) Filed June 5, 1900. Chas. C. Hopkins, clerk supreme court.

18 *Opinion.*

STATE OF MICHIGAN:

Supreme Court.

THE MICHIGAN SUGAR COMPANY, Relator,
vs.
THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Respondent.

In 1897 the legislature of this State passed an act entitled, "An act to provide for the encouragement of the manufacture of beet sugar and to provide a compensation therefor, and to make an appropriation therefor."

Section 2 provides: "No money shall be paid for sugar so manufactured unless such sugar shall have been so manufactured in this State and from beets grown in the State of Michigan, and unless such sugar shall contain at least ninety per cent. crystal-ized sugar, and the manufacturer shall produce good and sufficient receipts and vouchers to show that at least $4 per ton of twenty hundred pounds has actually been paid for all beets purchased containing twelve per cent. of sugar, said twelve per cent. being the basis for valuation of the purchase price of $4 per ton. The quantity and quality of sugar upon which all of said bounty is claimed shall be determined by the commissioner of the State land office with whom all claimants shall from time to time file verified statements showing the quantity and quality of sugar so manufactured by them, the price paid the producer for the beets actually produced in this State upon which said bounty is claimed."

Section 3 provides: "The persons, firms or corporations so intending to engage in the manufacture of beet sugar in this State shall, before commencing the same, file a statement with the commissioner of the State land office setting forth their proposed undertaking, the capacity of their manufactory, the number of tons of beets they intend to manufacture per annum, and request said commissioner of the State land office to appoint a suitable weighman and inspector as hereinafter provided."

19 Sections 4 and 5 provide that the commissioner of the State land office shall appoint a weighman and inspector to keep an accurate account of the sugar manufactured and the kind and character of the beets furnished; and also provide that the firm or corporation buying the beets and manufacturing the sugar shall, in order to obtain the bounty provided by the act, pay to the seller of the beets at least $4 per ton for beets containing twelve per cent. of sugar and a sum proportionate to that amount for beets containing a greater or less per cent. of sugar.

Section 6 provides: "When any claim arising under this act is filed, verified and approved by the commissioner of the State land office as hereinafter provided, he shall verify the same to the auditor

general of the State, who shall draw a warrant upon the State treasurer for the amount thereof, payable to the person, firm or corporation to whom said sum or sums are due."

The act appropriated the sum of $10,000 for the years 1897 and 1898, and provided that if the bounty should exceed that amount, the deficit should be paid from the general fund.—Act No. 48, Public Acts of 1897.

In 1899 the legislature passed act 263, entitled "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided for the general expenses of the State government, salaries of the State officers, expenses of the State department and expenses of the legislature for the years eighteen hundred and ninety-nine and nineteen hundred."—Act No. 263, Public Acts of 1899.

Section 2 of this act provides: "The several sums appropriated by the provisions of any act to meet which this act provides a tax shall, so far as moneys are required to be paid to the boards or officers of any institution or commission, be paid out of the general fund in the State treasury to the proper board, or officer, at such times and in such amounts as the general accounting laws of the State prescribe, and the disbursing officer of such board or commission shall render his accounts to the auditor general thereunder."

It is claimed that while this last act does not in terms provide for an appropriation of any moneys to pay the bounty on beet sugar manufactured, yet that it was the intent of the legislature to provide by the act for such bounty, as a committee of the house of representatives caused a statement to be made showing the different amounts necessary to be raised; and it is claimed that this statement was an estimate of an excess of bounty over the tax previously raised, amounting to $42,714.06, and a further estimate of the amounts needed for the years 1899 and 1900 of $50,000 and $150,000 respectively.

On the other hand, it is claimed by the respondent that under date of December 2 and 29, 1898, the relator presented its claim for bounty earned, amounting to $28,451.07, which presumably covered all claims to the end of the year 1898; and that no specific appropriations were made by the act of 1899, nor any taxes levied for such bounty.

Relator claims that there is due it for such bounties the sum of $24,262. The accounts were presented to the auditor general by the relator for such amount, and payment was refused.

20 It appears that the relator is a corporation organized under the laws of the State, with a capital stock of $200,000; and that it has fully complied with all the provisions of the act of 1897 to be entitled to the bounty provided by that act.

But two questions are raised:

1st. It is claimed that there is no money in the State treasury with which to pay the bounty claimed, as the act of 1899 made no appropriation for it, and therefore the respondent properly refused to draw the warrant for the same; while on the other hand, it is claimed by relator that an appropriation was made and that though

the act of 1897 be found unconstitutional and void the relator is entitled to have the bounty paid, as the legislature has recognized by the act of 1899 the right of the relator to have the bounties earned under the act of 1897.

2d. It is claimed by respondent that the act of 1897 is unconstitutional.

We will discuss the last proposition first. This taxation is for no such public purpose that it can be upheld. There is no power in the State to authorize a tax for private purposes. Taxes can be levied only for public purposes to accomplish some government end. The legislature is the mere creature of an organic law deriving all its power from the Constitution. Its limits within that power must be admitted to be plenary, except so far as otherwise specifically limited; but outside those limits it is as powerless as if specifically prohibited. It cannot take the property of A and give it to B; nor can it tax it for the benefit of B. Here is a private corporation now calling upon the State for a sum of money to aid it in carrying on a private business, most of which money, if paid, must come out of the pockets of people who are not engaged in that business and who have no interest in it.

It is claimed by the relator that this is not a gift to the relator, but that it would not have engaged in the business but for this act of the legislature; that in reliance upon the act it built a plant at large expense and that it complied with the provisions of the act requiring it to pay to the producers of beets at the rate of $4.00 per ton; and that therefore the honor and integrity of the State are involved.

So the honor and integrity of the State might become involved under any other act however unconstitutional which the legislature might see fit to pass. What may have brought about the passage of the act of 1897 we need not discuss; the only question being whether it is within the legislative power. We need not point out specifically any particular provision of the Constitution which it violates. It is void whether it comes within any of the express provisions of the Constitution or not. It is not a law, but an act which attempts to take the property of one citizen and turn it over to another; to compel one class to donate a part of its property
21 to another. Under the express terms of the Constitution private property cannot be taken for private use, even with compensation, without the owner's consent; nor can it be taken for public use without just compensation. There is no claim here, nor can any be made, that these taxes thus imposed under the act are for any public use; nor could the State itself carry on such a business.

Counsel for relator seek to uphold this legislation by several cases cited in their briefs. Attention is called to Taylor *vs.* Ypsilanti, 105 U. S., 60, in which it was said: "In 1829 the legislature of Michigan passed an act providing for the payment from the State treasury of a certain sum, by way of bounty, for every bushel of salt manufactured by an individual, company or corporation, from water obtained by boring in Michigan, and exempting from taxation property used

for such purposes. Laws of Michigan, 1859, page 551. That law was subsequently amended; and in People *vs.* State Auditors (9 Mich., 327), decided in 1861, it was held that the relator, a manufacturing company, acquired a vested right to the amount offered by the original act, for all salt manufactured prior to the amendatory statute reducing the bounty. And the doctrines of that case were reaffirmed in East Saginaw Mfg. Co. *vs.* East Saginaw, etc. (19 Mich., 259), decided in 1869, after the passage of the act of March 22, 1869. The diligence of counsel aided by our own researches has not disclosed any adjudication of the supreme court of Michigan prior to May 26, 1870, in which the doctrine of these cases was recalled."

From an examination of the cases referred to in the above opinion in this court, it is evident that the constitutionality of the salt bounty act was not raised or passed upon. In the first case a mandamus was asked to compel the board of State auditors to allow a claim under the original act, as the board had refused payment on the ground that a subsequent act repealed the former one. In the second case a bill had been filed to restrain the collection of the taxes levied upon the property of complainant (the Salt Mfg. Co.) invested in the business of manufacturing salt. The ground for filing the bill was that the statute in force when the complainant commenced its manufacture exempted from taxation the property employed for that purpose; and complainant insisted that this statute was a contract between itself and the State and was irrepealable. The court held, however, that the statute was nothing but a bounty law and as such might be repealed at any time. On error, this was affirmed by the Supreme Court of the United States (13 Wall., 373).

22 We think the present case comes squarely within the reasoning of this court in People *vs.* Salem, 20 Mich., 452. In that case the question was the constitutionality of an act permitting townships to issue bonds in aid of the construction of railroads. It was said by Mr. Justice Cooley, beginning at p. 486: "But it is not in the power of the State, in my opinion, under the name of bounty or any other cover or subterfuge, to furnish capital to set private parties up in any kind of business, or to subsidize their business after they have entered upon it. A bounty law, of which this is the real nature, is void, whatever may be the pretense on which it may be enacted. The right to hold out pecuniary inducements to the faithful performance of public duty in dangerous or responsible positions stands upon a different footing altogether; nor have I any occasion to question the right to pay rewards for the destruction of wild beasts and other public pests; a provision of this character being a mere police regulation. But the discrimination by the State between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandise or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in State government. When the door is once opened to it, there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety,

but no further. Every honest employment is honorable; it is beneficial to the public; it deserves encouragement; the more successful we can make it, the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all, and to give all the benefit of equal laws. It cannot compel an unwilling minority to submit to taxation in order that it may keep upon its feet any business that cannot stand alone. Moreover, it is not a weak interest only that can give plausible reasons for public aid; when the State once enters upon the business of subsidies, we shall not fail to discover that the strong and powerful interests are those most likely to control legislation and that the weaker will be taxed to enhance the profits of the stronger. I shall not question the right of the people, by their constitution, to open the door to such discriminations, but in this State they have not adopted that policy, and they have not authorized any department of the government to adopt it for them."

23 On page 495 of the case, it was said by Justice Campbell:

"It has been said to be too clear to need argument that it would be usurpation and not legislation to take the property of A and give it to B. It must be on the same ground equally illegal to tax A for the benefit of B; for the amount of property taxed against his will cannot make any difference in the principle, neither can it make the wrong any less that he has companions in misery. Taxation for private purposes is no more legal than robbery for private purposes. And where an enterprise is conducted by private persons for their own benefit, the public authorities have no control over the expenditure and no share in the profits, it is a private enterprise and not a public one, whether large or small, and whether profitable or unprofitable. No enterprise can properly be regarded as a public enterprise in which the public has no voice. For the expenditure of public money the constitution and laws provide public officers and put them under adequate control and security. The money of the people belongs in the custody of the agents of the people. Governments cannot delegate public responsibilities to private and irresponsible hands."

These views have been affirmed and reaffirmed by this court.

The first contention of counsel for relator has no more substantial foundation than the other. The act of 1897 is unconstitutional and void, and yet counsel contend that though this be found, under the act of 1899 it is entitled to the bounty there appropriated. Counsel cite in support of this proposition the case of United States *vs.* Realty Co., 163 U. S., 427.

The question there raised was entirely different from the question here. Here no specific appropriations were made by the act of 1899, by which the sugar bounties could be paid, and the legislature has not recognized the relator's claim. But it has been held several times in this State that an unconstitutional statute is a statute only in form and lacks the force of law, and is of no more saving

effect to justify action under it than as though it had never been enacted.

Mason *vs.* Perkins, 73 Mich., 303.
Adsit *vs.* Osman, 84 Mich.

The writ of mandamus must be denied.

CHAS. D. LONG.
R. M. MONTGOMERY.
F. A. HOOKER.
J. B. MOORE.
C. B. GRANT.

(Endorsed:) Filed Oct. 2, 1900. Chas. C. Hopkins, clerk supreme court.

24 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the second day of October, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE MICHIGAN SUGAR COMPANY, Relator,
vs.
THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Respondent.

This cause having been heretofore submitted on the petition of relator, the answer of respondent, and briefs of counsel, and the same having been duly considered by the court, and it appearing to the court upon such consideration that the writ of mandamus as prayed for by relator ought not to be granted, it is hereby denied, with costs to the respondent, to be taxed.

25 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN *ex Rel.* MICHIGAN Sugar Company, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

To the Hon. Robert M. Montgomery, chief justice of the supreme court of Michigan:

The relator in this cause hereby petitions your honor to allow a writ of error in this cause from the Supreme Court of the United States to the supreme court of Michigan on the ground that in the opinion and judgment of said court upon an act of the legislature of Michigan, being Public Act No. 48 of the Laws of 1897, and also

upon act 263 of the Public Acts of Michigan of 1899, there is involved a Federal question which has been decided adversely to said relator. The question is whether the said opinion and judgment is as applied to relator in conflict with various provisions of the Constitution of the United States, and especially to the provisions against—

I. Impairing the obligations of a contract.

II. Denying to said relator the equal protection of the laws.

III. Depriving relator of its property without due process of law.

THOMAS A. E. WEADOCK,
JNO. C. WEADOCK,
Attorneys for Relator.

25½ [Endorsed:] 18204. Supreme court of Michigan. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Petition for writ of error. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thomas A. E. Weadock, John C. Weadock, att'ys for petitioner.

26 STATE OF MICHIGAN:

In the Supreme Court.

THE MICHIGAN SUGAR CO., a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

Assignment of Errors.

And now comes the above-named relator, by Thomas A. E. Weadock and John C. Weadock, its attorneys, and alleges that in the judgment of the court in this cause there is manifest error:

1. That the court erred in holding that act No. 48 of the Public Acts of Michigan for the year 1897 was unconstitutional and void, and that relator had not acquired and could not acquire any rights thereunder. The judgment of said court in said holding is in conflict with the Constitution of the United States, and especially with the provision forbidding any State to impair the obligations of contracts, and that clause of the fourteenth amendment to said Constitution which forbids the States to deprive any person of his property without due process of law.

2. Said judgment is erroneous in holding that relator was not entitled to the bounty on sugar manufactured by it in said State and already earned under its contract with the State of Michigan, and payment of which was provided for by act No. 263 of the Public Acts of Michigan for the year 1899, thereby denying to said relator the equal protection of the laws and depriving it of its property without due process of law.

27 3. Said judgment is erroneous because it is in favor of said respondent and against said relator, whereas it should have been in favor of said relator and against said respondent.

For the errors alleged said relator prays that the said judgment may be reversed and judgment be given against said respondent with costs.

THOMAS A. E. WEADOCK,
JOHN C. WEADOCK,
Attorneys for Relator.

November 10th, 1900.

27½ [Endorsed:] State of Michigan. In the supreme court. 18204. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Assignment of errors. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thos. A. E. Weadock, John C. Weadock, att'ys for relator.

28 *Bond.*

Know all men by these presents that we, The Michigan Sugar Company, a corporation, organized and doing business under the laws of the State of Michigan, at Bay City, Michigan, as principal, and Thomas Cranage and Nathan B. Bradley, as sureties, are held and firmly bound unto Roscoe D. Dix, auditor general of the State of Michigan, and his successor in said office, in the full and just sum of five thousand dollars ($5,000.00), to be paid to the said Roscoe D. Dix, auditor general of the State of Michigan, his successor, his certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, administrators, executors, jointly and severally, by these presents.

Sealed with our seals and dated this first day of November, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of Michigan, in a suit depending in said court between said Michigan Sugar Company, relator, and said Roscoe D. Dix, auditor general of the State of Michigan, a judgment was rendered against the said Michigan Sugar Company, and the said Michigan Sugar Company having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation to the said Roscoe D. Dix, auditor general of the State of Michigan, citing him and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Michigan Sugar Company shall prosecute its said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

MICHIGAN SUGAR COMPANY, [L. S.]
By THOMAS CRANAGE, *President.*

29 THOMAS CRANAGE. [L. S.]
N. B. BRADLEY. [L. S.]

Signed and sealed in the presence of—
JNO. C. WEADOCK.
M. M. LEWIS.

Approved this 10th day of November, A. D. 1900.

R. M. MONTGOMERY,
Chief Justice.

30 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Roscoe D. Dix, auditor general of the State of Michigan, respondent, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Michigan, in a suit wherein The Michigan Sugar Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert M. Montgomery, chief justice of the supreme court of Michigan, this tenth day of November, in the year of our Lord one thousand nine hundred.

R. M. MONTGOMERY,
Chief Justice, Supreme Court of State of Michigan.

Due personal service of this citation is hereby acknowledged this 10th day of November, 1900.

HENRY T. CHASE,
Deputy Att'y Gen'l, Att'y for Def't in Error.

STATE OF MICHIGAN, }
County of Ingham. }

On this tenth day of November, in the year of our Lord one thousand nine hundred, personally appeared Thomas A. E. Weadock before me, the subscriber, a notary public for the county of Ingham, State of Michigan, and makes oath that he delivered a true copy of the within citation to John F. Wilkinson, deputy auditor general of Michigan, Roscoe D. Dix, auditor general of the State of Michigan, defendant in error, being necessarily absent from his office.

Sworn to and subscribed the 10th day of November, A. D. 1900.

HARRY A. SILSBEE,
Notary Public, Ingham County, Mich.

30½ [Endorsed:] State of Michigan. In the supreme court. 18204. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Citation to appear in the Supreme Court of the United States on behalf of said relator, plaintiff in error. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thomas A. E. Weadock, John C. Weadock, att'ys for relator and plaintiff in error. Jno. F. Wilkinson.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Michigan, before you or some of you, between The Michigan Sugar Company, a corporation, relator, against Roscoe D. Dix, auditor general of the State of Michigan, respondent, a manifest error hath happened, to the great damage of the said The Michigan Sugar Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of November, in the year of our Lord one thousand nine hundred.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—
R. M. MONTGOMERY,
Chief Justice of the Supreme Court of the State of Michigan.

31½ [Endorsed:] 18204. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk supreme court.

To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto attached.

Lansing, Michigan, November 21, 1900.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of Michigan.

32 *Copy of Journal Entries in Journal No. 29, p. 18204.*

Parties.	Plaintiff's attorneys.	Defendant's attorneys.
The Michigan Sugar Company, relator, *vs.* The Auditor General, respondent.	T. A. E. & J. C. Weadock.	Horace M. Oren. Charles D. Joslyn, of counsel.

Journal.	Date.	Proceedings.
	1900.	
	May 15	Petition filed.
Q. 113...	May 18	Order allowed, returnable June 5, 1900.
	June 5	Submitted on briefs.
Q. 206...	Oct. 2	Writ denied with costs. Opinion filed.
	Nov. 10	Petition for writ of error filed.
	" "	Writ of error filed.
	" "	Assignment of errors filed.
	" "	Bond on appeal filed.
	" "	Citation, with proof of service, filed.
	Nov. 21	Return made to Supreme Court of United States.

33 Supreme Court of the State of Michigan.

THE MICHIGAN SUGAR COMPANY, Relator and Plaintiff in Error,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent and Defendant in Error.

STATE OF MICHIGAN, } ss:
In Supreme Court, }

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the originals and it is a true transcript therefrom and of the whole thereof; that attached thereto are the petition for writ of error, the writ of error, with allowance endorsed thereon; a copy of the bond to the adverse party, duly approved, filed with the writ of error; the citation, with proof of service endorsed thereon, and the assignment of errors in the Supreme Court of the United States.

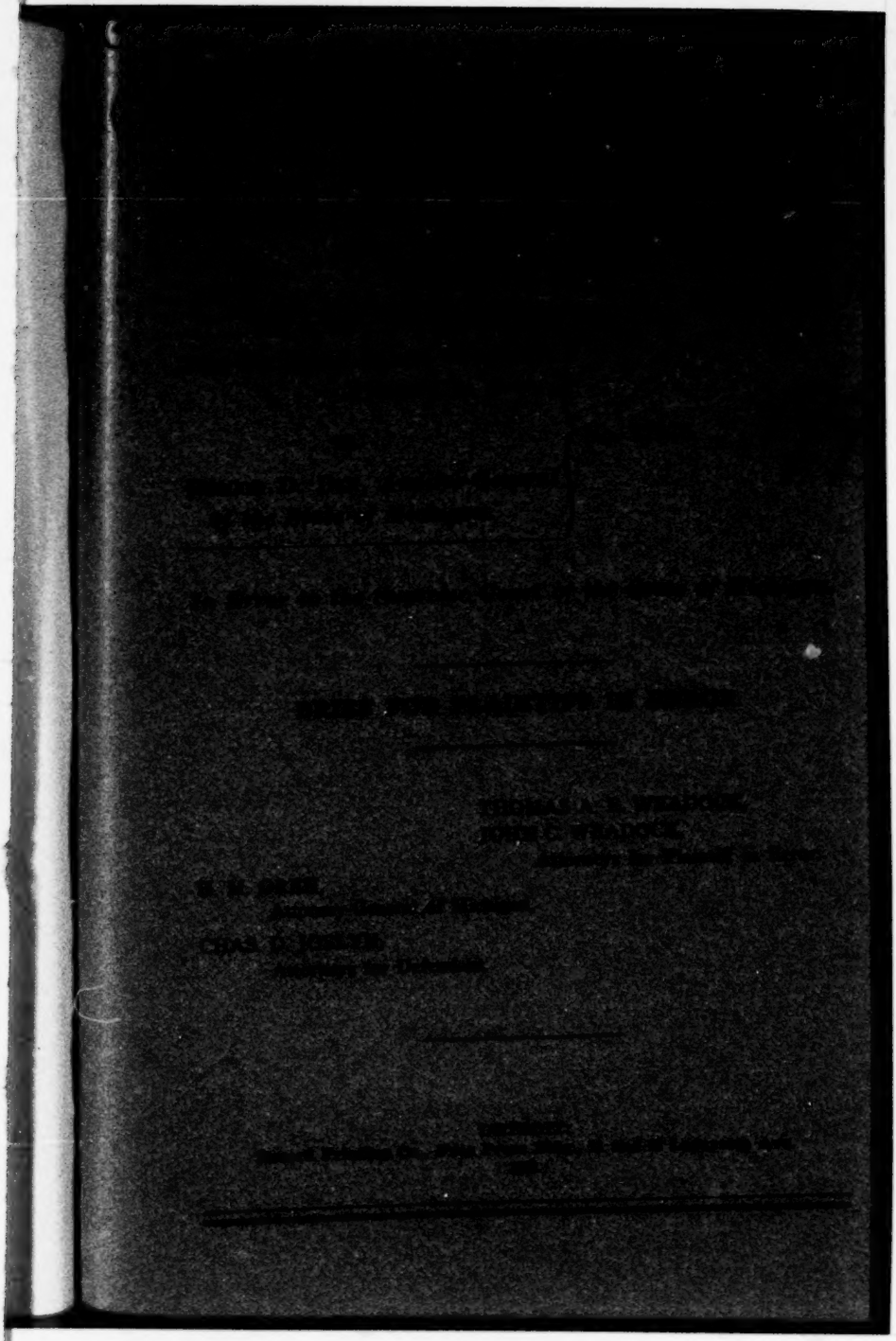
In testimony whereof I have hereunto set my hand and affixed

the seal of said supreme court, at the city of Lansing, this twenty-first day of November, A. D. 1900.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No., 17,976. Michigan supreme court. Term No., 491. The Michigan Sugar Company, plaintiff in error, *vs.* Roscoe D. Dix, auditor general of the State of Michigan. Filed November 24th, 1900.



Supreme Court of the United States

OCTOBER TERM, 1901.

THE MICHIGAN SUGAR COMPANY, *Plaintiff in Error,*

vs.

ROSCOE D. DIX, *Auditor-General of the State of Michigan.*

In Error to the Supreme Court of Michigan.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff in error is a Michigan corporation engaged in the manufacture of sugar from beets. In 1897 the Legislature of Michigan passed a law, being Public Act 48, page 55, Sec. 1245, Compiled Laws of 1897, providing that there should be paid out of the State treasury to any person, firm or corporation engaged in the manufacture in the State of Michigan of sugar from sugar beets grown in the State of Michigan, one cent per pound for each pound of sugar so manufactured under the conditions and restrictions of said act. These conditions were that the beets should be grown in the State and contain at least 90 per cent of crystalized sugar, and the manufacturer should produce receipts and vouchers to show that at least $4 per ton of twenty thousand pounds had been paid for all beets purchased containing 12 per cent of sugar. The quantity and quality of sugar and amount of bounty was to be determined by the Commissioner of the State Land Office, with which officer manufacturers were to file statements setting forth their proposed undertaking and the capacity of their manufactory, and the quantity they intended to manufacture per annum. The Commissioner of the State Land Office was

to appoint a weigh-man and inspectors under whose direction the sugar was to be placed in original packages and branded by them, their fees to be paid by the manufacturer. Weigh-men and inspectors were to file an oath in the office of the Secretary of State, to make monthly reports and determine the weight and percentage of sugar. Claims under the act were to be paid upon the warrant of the Auditor-General, money to be raised by general tax, and the bounty was to be paid for the period of seven years. Under this act the plaintiff in error earned the bounty for 1898 and received it, and also earned $24,262.99 in 1899, which sum was certified by the Commissioner of the State Land Office, and upon demanding a warrant on the State Treasurer for that amount from the Auditor-General he refused to give it, and a writ of mandamus was asked for from the Supreme Court of Michigan, to compel him to do so. The Auditor-General acted on the advice of the Attorney-General of Michigan. The Auditor-General claimed that the act granting the bounty was unconstitutional and that no appropriation had been made to pay it. The Supreme Court of Michigan sustained the contention, and the Sugar Company appealed to this Court. The plaintiff in error claims that Act 263 of 1899, which is set out in the brief, was an appropriation to pay this bounty, and that the amount of money earned became its property, in which it had a vested right and of which it could not be deprived without violating the Constitution of the United States. It also claims that Art. XIII., Sec. 11, of the Constitution of Michigan authorizes the Legislature to enact the bounty law in question.

This case presents two main questions:

1. Does the State of Michigan, by the action of the Auditor-General, deprive The Michigan Sugar Company of its property without due process of law in contravention of the XIVth Amendment to the Constitution of the United States?

2. May the State of Michigan, under its Constitution, pay a bounty for the successful culture of a new agricultural product in that State, viz.: sugar beets.

3. Will this Court consider itself bound to follow the Supreme Court of Michigan in construing the Constitution of that State?

The plaintiff in error was the first to produce beet sugar in the State of Michigan, and is the pioneer of the many factories in that State. The situation was fully and fairly

Public Acts, Michigan, 1899, No. 263.

"An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government, salaries of the State officers, expenses of the State departments and expenses of the legislature for the years eighteen hundred ninety-nine and nineteen hundred."

The People of the State of Michigan enact:

SECTION 1. There shall be levied upon the aggregate of taxable real and personal property of the State in the year eighteen hundred and ninety-nine, the sum of one million, sixteen thousand, six hundred two dollars and seventy-two cents, and for the year nineteen hundred the sum of nine hundred eighty-two thousand two hundred sixty-two dollars, to be raised by tax to meet the several appropriations made by law wherein no tax is otherwise provided.

SECTION 2. The several sums appropriated by the provisions of any act to meet which this act provides a tax, shall, so far as moneys are required to be paid to the boards or officers of any institution or commission, be paid out of the general fund in the State treasury to the proper board or officer, at such times and in such amounts as the general accounting laws of the State prescribe, and the disbursing officer of such board or commission shall render his accounts to the auditor general thereunder.

SEC. 3. The auditor general shall apportion each year the amounts herein directed to be raised among the several counties in this State as provided by law for the apportionment of State taxes.

Approved June 23, 1899.

stated in Doc. No. 699, H. of R., 56 Congress, 1st Session, as follows:

"MICHIGAN. In 1897 the Legislature passed a law paying 1 cent per pound for refined sugar manufactured. The act appropriated $10,000 for the payment of bounties earned, and provided that any excess should be drawn from the general fund, and this act was to continue in force for seven years. The Michigan Sugar Company's factory was built and drew the bounty to the extent of its appropriation for its first year's run, and put in a claim for the balance of the bounty over and above the appropriation, and in addition to this eight other factories were built and operated in various parts of the State during the year of 1899, manufacturing altogether 301,106,113 pounds of sugar, entitling them to $301,106.13, earned as bounty. Seeing this big demand that was going to be made on the treasury of the State, the Legislature undertook to amend the law, giving one-half cent per pound instead of one cent, as under the old law. The governor of the State insisted that the law should be amended by fixing a limit of $25,000 as the maximum that could be paid to any one factory. This was not done, and the governor vetoed the bill. This left the old law paying one cent per pound as bounty for sugar in force. The Attorney-General of the State rendered an opinion to the auditor that warrants should not be drawn on the $200,000 appropriated for this purpose, claiming in his opinion that a bounty is not a proper expense of the State on which a tax could be predicated."

After the passage of the bounty act in 1897 the relator, relying upon that, upon the decisions of the Supreme Court of Michigan on the salt bounty law, and the good faith of the State, erected at Essexville, a suburb of Bay City, such a factory as was required by the law. It earned and received in 1898 $28,451.07 sugar bounty.

In 1899 it earned $24,262.99 as sugar bounty.

Its claim for that sum was presented to and allowed by the Commissioner of the State Land Office. A warrant was demanded from the Auditor-General upon the State Treasurer, and he refused it when a mandamus was asked for from the Supreme Court of Michigan to compel him to issue it.

The Supreme Court of Michigan held the sugar bounty law unconstitutional and The Michigan Sugar Co. thereupon appealed to this Court.

The case stood before the Michigan Court in this condition.

The people of Michigan, understanding the great benefits to be derived from the establishment of the sugar beet

industry in the State, and appreciating that it was an experiment that might be costly to those who would engage in it, passed the sugar bounty law of 1897, being Act No. 48 of the Public Acts of that year. Sec. 1,325 et seq., Compiled Laws of 1897.

In adopting this legislation, it followed in the course of other States of the Union, of the United States, and of foreign countries.

The history of the fostering care and financial aid given to the industry in France and Germany is interesting, and the fact is developed that nowhere has the business of manufacturing beet sugar been organized and carried on without the aid of public bounty. Everywhere the business in its infancy has been carried on at a loss and the great public good resulting from its establishment is evidenced in the decreased imports of sugar, the reduction of price on an absolute necessity, the encouragement of agriculture, the increase of taxable property.

Act 48 provides that there shall be paid out of the State Treasury to any person, firm or corporation, engaged in the manufacture in the State of Michigan of sugar from sugar beets grown in the State of Michigan, one cent per pound upon each and every pound of sugar so manufactured under the conditions and restrictions of said act.

Act No. 48 of Public Acts of 1897, page 55, Sec. 1245, Compiled Laws of 1897.

The petitioner shows that it has complied with all of the provisions of said Act, has earned the bounty, the money is in the treasury, and the Auditor-General declines to issue his warrant until directed so to do by this Court.

Section 6 of said Act 48, being Sec. 1250, Compiled Laws of 1897, provides that when the Commissioner of the State Land Office shall have verified a claim, the Auditor-General of the State shall draw a warrant upon the State Treasurer for the amount thereof.

The compensation provided for by the Act is not a gift, and the moneys for which the Court is asked to direct the Auditor-General to draw his warrant has actually been earned. The relator would never have been organized, and its money would not have been expended, save in reliance upon the Act in question. The price which the relator was required to pay, viz.: $4.00 per ton, was fixed by the Act, and has been paid. The beets received have been weighed, and the sugar manufactured, packed, etc., by the State's agents, who have been compensated by the relator at the price fixed by the Legislature, and all provisions of the

Act having been complied with, the compensation having been earned, it should be paid.

The payment of this compensation as agreed involves more than the mere discharge of a liability—it involves the honor and integrity of the great State of Michigan.

The State by the legislative and executive has decided that its public interest demands that the manufacture of beet sugar from sugar beets grown in the State shall be encouraged, that a certain price shall be paid for the beets in order to influence the agriculturalists to plant, cultivate and crop them, that a certain precautionary system of inspection, etc., should be employed, all at the expense of those who would invest their means in a manufactory, the cost of which is large and the result of which is doubtful, and has now, that the investment has been made and the risk assumed on the faith and credit of the State's promised recompense, no right to withhold it when earned. The action of the State was free and voluntary, depending wholly upon considerations of public policy, but when taken and acted upon, those who have trusted to the State's honor and done all that was asked, can not morally or legally be deprived of their recompense, so solemnly promised and faithfully earned.

The compensation offered was limited in amount and time. No one questions the right of the State to withdraw its offer. The State has not undertaken to deny liability, but the Auditor-General refuses to comply with the plain mandates of the statute.

The amount claimed is fixed, and the Legislature at its general session in 1899 raised the money necessary to pay this identical sum.

The Legislature of Michigan in 1859 passed an act, being Act No. 200, page 551, of the Public Acts of that year, reading as follows and entitled: "An Act to encourage the manufacture of salt in the State of Michigan.

Section 1. *The people of the State of Michigan enact,* That all companies or corporations formed, or that may be formed for the purpose of boring for and manufacturing salt in this State, and any and all individuals engaged or to be engaged in such manufacture, shall be entitled to the benefits of the provisions of this Act.

Sec. 2. All property, real and personal, used for the purpose mentioned in the first section of this Act, shall be exempt from taxation for any purpose.

Sec. 3. There shall be paid from the treasury of the State, as a bounty to any individual or company or cor-

poration, the sum of ten cents for each and every bushel of salt manufactured by such individual, company or corporation, from water obtained by boring in this State: *Provided*, That no such bounty shall be paid until such individual, company or corporation shall have at least five thousand bushels of salt manufactured."

Approved February 15, 1859."

In 1861, by Act No. 186, the former Act was amended. Laws of 1861, page 305.

The amendments required that all claimants must be engaged in the business by August 1st, 1861.

That the limitation of tax exemption should expire in five years.

That ten cents should be paid for each barrel instead of bushel, and no one should receive more than one thousand dollars.

In the case of The East Saginaw Salt Mfg. Co. State Auditor, 9th Michigan, 326, this Court held that the bounty earned after the Act of 1859 took effect and prior to the amendment should be paid in accordance with the terms of the original Act. *"That the relators had acquired a vested right to the bounty offered by the Act of 1859, upon all the salt manufactured before the Act of 1861 took effect, and that they could not be deprived thereof by the last mentioned Act."*

It will not do to suggest that the validity of the Act was not in question, for the right of the claimant depended upon the original act, and if that gave a right, the question whether the amendment took it away was presented and the Court held that a *vested right was acquired* which the parties *could not be deprived of* by the last Act. The Court determined the question. There are cases where the rights of private parties have been determined under void laws, but no cases can be found in Michigan where the Supreme Court failed to discover that a law was invalid because unconstitutional "on principle," where the law itself was directly in question, and the questions involved related to taxation as against the interest of the State. In such cases, the Supreme Court is the jealous guardian of the interests of the people of the State, and the fact that it upheld the bounty, shows that "on principle" it considered the right to grant it unquestionable.

The same law as amended was again before the Court in East Saginaw Salt Mfg. Co. vs. East Saginaw, 19 Mich., 259.

Cooley, C. J., in stating the questions involved, spoke earnestly of the serious and alarming consequences that

would flow from the interpretation contended for by the complainant, viz.: That the law was a contract, the obligation of which was impaired by its amendment or repeal. Certainly under such consideration as the law then had, the Court would have found it a nullity, if it was such. On the contrary, the holding in the former case was approved, and the Court said: "When a bounty is earned, it becomes a vested right, and we fully agree with former decision of this Court in People vs. Board of State Auditors, 9th Michigan, 327, *that the party earning it can not then be deprived of the right.*" "But when is bounty earned?" * * * The money bounty on each bushel of salt above the required quantity, was earned when that bushel was made."

Judge Campbell, in the dissenting opinion, page 288, said: "Whatever these various offers in 1859 may have meant, there can be no doubt that so long as they remained unrevoked, every acceptance of them formed a contract which could not lawfully be repudiated."

In the case of Smith vs. Auditor-General, 85 Mich., 205, the holding of the Court that a bounty earned was a vested right, of which the owner could not be deprived, was again approved.

"It was the duty of the Legislature to provide money for the payment of the bounty offered by the State."

Smith vs. Auditor-General, 85 Mich., 205.

In Taylor vs. Ypsilanti, 105 U. S., 60, etc., at page 65, Harlan, Judge, said: "In 1859 the Legislature of Michigan passed an Act providing for the payment from the State Treasury of a certain sum, by way of bounty, for every bushel of salt manufactured by any individual, company or corporation, from water obtained by boring in Michigan, and exempting from taxation property used for such purposes. Laws of Mich. 1859, page 551. That law was subsequently amended, and in People vs. State Auditors (9 Mich., 327), decided in 1861, it was held that the relator, a manufacturing company, acquired a vested right to the amount offered by the original act, for all salt manufactured prior to the amendatory statute reducing the bounty. And the doctrines of that case were reaffirmed in East Saginaw Mfg. Co. vs. East Saginaw, etc. (19 Mich., 259), decided in 1869, after the passage of the Act of March 22, 1869. The diligence of counsel, aided by our own researches, has not disclosed any adjudication of the Supreme Court of Michigan prior to May 26, 1870, in

which the doctrines of these cases were recalled, or in any degree modified."

In Calder vs. Henderson, 54 Federal, 802, at 804, the Court said: "It is to be noticed that the bounty offered by the statute is for sugar thereafter to be produced, and to those producers only who shall accept the provisions of the Act and comply with its terms, etc. In our opinion, the "bounty" so called in the statute, is not a pure gratuity or donation by the government, but was intended to be, and is in fact, a standing offer of reward and *sugar bounty earned was property.*"

"The claim of David R. Calder, who accepted the terms of the Act for the year 1891, for sugar produced during that year, is a claim arising under a contract, a just claim, and one that the government cannot avoid otherwise than by repudiation. It is more than a possibility coupled with an interest."

The theory upon which this Act is attacked is that the purposes for which the money is paid are private and not public, but this can not be sustained. While it is a bounty in a sense, yet, strictly speaking, it is a compensation offered to the public (i. e., to all persons who will perform the service required) for the purpose of encouraging the investment of capital, the employment of brains, ability and labor in an enterprise deemed hazardous, which, if successful, will be a public benefit.

The money when paid goes to private individuals, but only to recompense them for money already expended and service already performed, which was for the benefit of all alike.

The moneys paid by this State to its soldiers and the payment of which has been sustained by this Court, went to the individuals, but it was in compensation for the brain, ability, labor and risk employed and undertaken for the benefit of all.

The bounty paid by the government to encourage the construction of speedy ships is paid to individuals, but the benefit is public.

The bounty paid for the destruction of wild animals and pestiferous birds is paid to individuals, but it is for the public good. Not the good of every individual who makes up a part of the public—but yet enough of the individuals to be the public. The homes of Michigan may not have been in actual danger in '61-5, the lives of many people were never threatened by wild beasts, yet the purposes of the benefits were none the less public.

"Public and individual intrests are often so intimately connected and blended together, that it is impossible to

advance the one without at the same time advancing the other. There is no public good without at the same time a private benefit. They are inseparable. The former cannot exist without the latter. If the latter be not promoted, it proves that it be not a public good. That which affects the interest of an entire community must to a greater or less degree affect the interest of each member of it. To determine whether a matter is of public or merely private concern, we have not to determine whether or not the interests of some individuals will be directly promoted, but whether those of the whole or the greater part of community will be."

The quoted language is from the opinion of Dixon, C. J., in Soens vs. Racine, 10 Wis., 214.

In the case of Salt Company vs. East Saginaw, 13 Wallace, page 372, Justice Bradley said, in speaking of the salt bounty act and in approval of the decree of the Supreme Court above referred to, that

"The question in this case is, whether any contract was made at all; and, if there was, whether it was a contract determinable at will, or of perpetual obligation? * * * It declares, in purport and effect, that *all* corporations and individuals who shall manufacture salt in Michigan from water obtained by boring in that State, shall be exempt from taxation as to all property used for that purpose, and, after they shall have manufactured 5,000 bushels of salt, they shall receive a bounty of 10 cents per bushel. That is the whole of it. As the Supreme Court of Michigan says, it is a bounty law, and nothing more; *a law dictated by public policy and the general good,* like a law offering a bounty of fifty cents for the killing of every wolf or otherwise destructive animal. *Such a law is not a contract except to bestow the promised bounty upon those who earn it,* so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time. As long as it remains a law every inhabitant of the State, every corporation having the requisite power, is at liberty to avail himself, or itself, of its advantages, at will, by complying with its terms, and doing the things which it promises to reward, but is also at liberty, at any time, to abandon such a course. There is no obligation on any person to comply with the conditions of the law. It is a matter purely voluntary; and, as it is purely voluntary on the one part, so it is purely voluntary on the other part; that is, on the part of the Legislature, to continue, or not to continue, the law. The law in question says to all: You shall have a bounty of 10 cents per bushel for all salt manufactured, and the property used shall be free from taxes.

But it does not say how long this shall continue; nor do the parties who enter upon the business promise how long they will continue the manufacture. It is an arrangement determinable at the will of either of the parties, as much so as the hiring of a laboring man by the day."

In the matter of the expenditure of public funds, the Legislatures of the various States have much greater power than has the Congress of the United States, and this has been recognized by the Federal and State Courts.

In the matter of the payment of a bounty on sugar by the general government, we have the benefit of the judgment and opinion of the Supreme Court of the United States.

In the case of Field vs. Clark, 143 U. S., page 649, the contention was made that the bounty provisions of the Revenue Act of 1890 were unconstitutional, and therefore that the entire Act was void. The Court declines to pass upon the validity of the bounty provisions, holding that the rest of the Act would be valid if those provisions were void.

The Court of Appeals of the District of Columbia, in the Miles case (so-called), reported in 5 D. C. App., 138, had held that the bounty provisions of the general Revenue Act were invalid, but the question was not directly involved in that case, and the holding upon that point is considered dictum.

In the case of the United States vs. Realty Co., 163 U. S., page 427, the Supreme Court of the United States again refuses to pass upon the constitutionality of the bounty provision of the Act of 1890, holding that the Act of 1895 making appropriations for the payment of the bounty earned under the Act of 1890, was valid, and that the bounty should be paid.

In the case of Allen vs. Smith, 173 U. S., page 389, the question of who was entitled to a bounty was presented and the Court, on page 402, speaking through Justice Brown, says: "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized."

We contend, first, it is unnecessary to determine whether Act 48 of the Public Acts of 1897 is valid, in order to entitle the relator to the mandamus prayed for to compel the Auditor-General to issue his warrant in payment of

the earned bounty, and second, that Act 48 of the Public Acts of 1897 is valid.

The answer of the Auditor-General presented three questions:

First. Were Acts 48, Public Acts of 1897, and 263 of Public Acts of 1899, in part, appropriations of public moneys for public purposes?

Second. Did the two acts taken together or separately make an appropriation by law to pay a sugar bounty when earned?

Third. If necessary, can the schedule prepared by the State Accountant, used by the Committee on Ways and Means, read for the information of the House and Senate when passing Act No. 263, Laws of 1899, and upon which the Legislature acted, and showing the purposes for which the bill was passed, and which is now on file in the office of the State Accountant, who is charged with the responsibility of keeping an account of the State's funds, be availed of by this Court in directing the Auditor-General as to the payment of money admitted to be due, mentioned in the schedule, and for which amount a tax has been levied and collected, and the money is now on hand?

We wish to call the Court's attention to the following cases, viz.:

In People vs. Squire, 107 N. Y., 593, S. C. 1 Am. St. R., p. 893, at 897, the Court said: "Neither is the act a local or private one within the meaning of the section referred to. * * * This act is general in terms, applying to all cities in the State of a certain class, and to every corporation carrying on business requiring the use of electrical wires or conductors in such cities. That the number of such cities is limited or restricted does not make the bill a private or local one, within the constitutional meaning and intent of these words, was expressly decided in the cases referred to.

How many companies there are to which this bill applies we have no means of determining; but the *fact that a general law is passed regulating the operations of all such companies,* in cities of the class referred to, does not constitute it a private or local bill, although it may happen that such companies are located in one or more cities of the State."

See also Ferguson vs. Ross, 126 N. Y., 459, 465.
People vs. Warden, 30 N. Y. S., 1095.
Daggett vs. Colgan, 92 Cal., 53.
McRae vs. Commissioners of Land Office, 89 Mich., 464.

In Consumers' Gas Co. vs. Harless, 131 Ind., 446, an act granting to companies, corporations, etc., organized for the purpose of drilling for petroleum or natural gas, the right to condemn and appropriate land for the purposes of laying their pipes, held not to be a local or special act, as it applied generally to a particular class of cases.

In Waterloo Woolen Mfg. Co. vs. Shanahan, 128 N. Y., 345, held a reading of the statute itself must determine whether it is a public purpose (p. 366). The Court there hold that the determination by the Legislature that a purpose is public is conclusive, and that such determination is to be gathered from the language and scope of the act.

In Allen vs. Pioneer Press Co., 40 Minn., 117, S. C., 12 Am. St. Rep., 707, at page 709, the Court said: "Laws public in their objects may be confined to a particular class of persons, if they be general in their application to the class to which they apply, provided the distinction is not arbitrary, but rests upon some reason of public policy growing out of the condition or business of such class. Such distinctions are being constantly made, as in the case of minors, married women, common carriers, railroad companies and the like. This kind of legislation is not confined, as plaintiff seems to contend, to cases involving the police power of the State. For example, it may be public policy to give to laborers a lien or other preference for the collection of their wages, not given to other creditors, or to give a lien to laborers in one business, while it would be neither practicable nor politic to give it to laborers in some other employment. So long as the law applies equally to all engaged in that kind of business, treating them all alike, subjecting them to the same restrictions, and giving them the same privileges under similar conditions, there it is *public in its character.*"

A law which refers to a certain relation or condition, and operates upon all standing in that relation, is a general law.

Iowa R. L. Co. vs. Soper, 39 Iowa, 112.

Act authorizing board of health of Detroit to require money to be raised by tax is not for a local purpose, as it concerns the preservation of the public health.

Davock vs. Moore, 105 Mich., 120.

In State vs. Griffin, 69 N. H., 1, the Supreme Court of New Hampshire held an act prohibiting throwing sawdust into Lake L. a public act. The Court said: "The act confers upon Manchester or its citizens no indi-

vidual or exclusive right or benefit, within the meaning of the constitution. Every inhabitant of the State is entitled to enjoy the benefit conferred by the statute on complying with the necessary conditions."

We submit that it is a matter of no difficulty for the courts to hold that a tax shall not be levied for a private purpose, but it is a question of great difficulty at times to determine whether the purpose of a tax is private. The learned Justices of the Michigan court disagreed upon that identical question in the Salem case, and that question has always been determined in the individual case. The real determination in the Salem case is the law of Michigan to-day, but the question there presented will not materially aid this court in determining the one now presented. Justice Cooley wrote the opinion in the salt bounty case, 19 Mich., 259, and it was filed on the 26th day of October, 1869. That case was as nearly parallel with the one at bar as it is possible for two cases to be, in so far as the facts are concerned, and he said in writing the unanimous opinion of the court, as we have heretofore pointed out, that "a bounty earned is a vested right." On the 26th day of May, 1870, the opinion in the Salem case was handed down, and in it he refers to the fact that in the course of the argument allusion was made to the power of the State to pay bounty, and with the salt bounty case and the decision rendered therein in his mind, he gave expression to the sentence quoted in respondent's brief, viz.: *"But it is not in the power of the State, in my opinion, under the name of a bounty or any other cover or subterfuge, to furnish the capital to set private parties up in any kind of business or to subsidize their business after they have entered upon it."* Certainly the learned jurist did not refer to the salt bounty act, which had been twice before the Supreme Court, and which had been declared binding until revoked by the State, as a "cover" or a "subterfuge." He expressed himself clearly at the time, and at this distant day, standing in the light of the history of Michigan, which is free from the blot of deception and repudiation, his meaning is still plain and unquestionable, viz: That when the real purpose of a bounty act is to furnish capital to invest in business, or subsidize business after it has been entered upon, then it is void; but where the great State has held out a reward for the actual investment of capital in a business known to be hazardous and experimental, and recognizing the great public benefits to be derived therefrom, fixes the compensation which must be paid by any person or corporation engaging in the business for the product which it must necessarily buy, regu-

lates the manner of transacting the business in its various details, and reliance being placed upon such proffered reward, capital is invested and such reward is earned, then, as was held in the salt bounty case, it becomes a vested right. The law becomes "a contract to bestow the promised bounty on those who earn it." By the sugar bounty act, *no class of individuals, no corporation then in existence* was favored at the expense of any other. It was proposed for the benefit of all, at the partial expense of the State, and at the great expense of the individual engaging in the hazardous enterprise, to determine whether the soil and climate of Michigan was fitted for the production and manufacture of one of its greatest needs, a question which had always been determined elsewhere with public aid. The inducement, reward or bounty was offered and, when earned, is part paid, and the respondent wants to know whether the remainder shall be repudiated.

In the portion of the opinion of Justice Campbell in the same case, cited by the opposing counsel, it is stated that "taxation for private purposes is no more legal than robbery for private purposes, and where an enterprise is conducted by private persons for their own private benefit, the public authorities have no control over the expenditures and no share in the profits, it is a private enterprise and not a public one," could not have been referring to a bounty such as the one in question here, or the one which he and the other justices in the same court had upheld, and in further defining a public purpose he said: "No enterprise can properly be regarded as a public enterprise in which the public has no voice." In the sugar bounty act the business of manufacturing sugar was not engaged in solely for private benefit. The public authorities do control the expenditure of the money, and do require conditions precedent to the payment of the money, and have a voice in the enterprise, if it can properly be called an enterprise, so that without in any way departing from the rule laid down in the Salem case, and, in fact, clearly within so much of the dictum of that case as referred to the payment of bounties, and within the rule established by long usage and recognized by this court, the position of relator can and should be sustained.

Second. The two acts do make an appropriation.

Every contention for either side of the first proposition makes for our claim upon this question. The Attorney-General argues that the act makes an appropriation of public moneys for private purposes, and therefore should have a two-thirds vote. We argue that the appropriation was for a public purpose. Both agree that the act made

an appropriation, our only disagreement being upon the purpose.

The Legislature was not engaged in making false representations to the public when it passed Act 48. Under the form of law it offered compensation for the investment of capital, brain and manual labor, to the end that the public *interests would be served.* It followed the example of its predecessors in passing the salt bounty act, which had received the approval of the highest courts in the world, Michigan and the United States. It followed the example of its predecessors in passing the soldier bounty and other bounty laws. It meant to do and did something upon which the public relied, and relying, acted. The appropriation here is as specific as it was in any of those acts. In the salt bounty matter, the Legislature said "there shall be paid from the State a bounty." Here the same thing is said, and further, how and when the bounty shall be paid is expressly provided for. No set words are required to make an appropriation.

Act 48 of the Laws of 1897, enacted in effect a contract between the State and relator. As such contract the statute should be construed as creating certain liabilities, among which was that of providing the compensation which it contracted to pay, and which compensation the payment whereof was thus incurred became an expense of the State's properly included as an item of the general expenses of the State government.

See Huidekoper's Lessee vs. Douglass, 3 Cranch 1, at page 70.

Act 263, Laws of 1899, therefore, when read in connection with said Act 48, establishes relator's claim. Act 263, Laws of 1899, included the sum due relator. It provided a tax, included wherein is this sum. There is thus provided by constitutional means the funds wherewith to compensate relator. Act 48 makes the contract, provides the compensation, and makes appropriation. Act 263 creates the fund. After the State's liability is fixed under the first law, No. 48, everything further, if anything, is essential under the constitution and laws is contained in said Act 263, Laws of 1899.

See State vs. Gerhardt, 145 Ind., 439.

The primary object of the provision in the constitution, Art. 14, S. 5, that no money shall be paid out of the treasury except in pursuance of appropriations made by law, is to guard against official mal-administration. That is

shown by the fact that some recent constitutions provide punishment for such acts in similar provisions.

In this case there is no doubt as to the obligation created by Act 48; it cannot be contended that the State did not arrange to meet this expense, the presumption being in view of its liability that it would include this claim in its expense budget. There was resting upon the State a legal and moral obligation to pay this claim. The credit and good name of the State required its payment. It is submitted that it will not be presumed that the State of Michigan intended to repudiate said liability to relator, but rather that according to the policy of the State in meeting its just obligations it included in said aggregate sum of $1,016,602.72 (Act 263, Laws of 1899), the amount due relator.

The law creating the liability is a public law, the obligation is a State expense, and as such properly included in Act 263. Every positive safeguard of the law is complied with in this case. It is not a private matter, nor one calling for specific acts of appropriation. The money to pay the claim of relator should be included under the terms of the contract (Act 48, Laws of 1897) in the items of State expense. As a matter of fact, it was so included, according to the presumption based on reading said Act 263 in connection with Act 48. If it should in any future event be not so included, the burden should be upon the State to show it. Where such was the fact, it could be established. Here, however, the fact is that it was included, and it is sought by technicalities to avoid paying relator as fairness and honesty require that it should be paid. Every consideration of justice impels to the payment of relator's claim.

In Campbell vs. Commissioners of State Soldiers and Sailors Monument, 118 Ind., 119, it is held that an appropriation by *implication* results from acts indicating such legislative intent. The Court there said: "The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of public moneys to a given purpose without in any manner designating the act as an appropriation. It may be said generally that a direction to the proper officer or officers to pay money out of the treasury on a given claim or class of claims, or for a given object, may by implication be held to be an appropriation of a sufficient amount of money to make the required payments." In that case $200,000.00 had been appropriated for the specific purpose of building the monument, and the court decided that such sum should be devoted to that purpose, but that the further expenses

were to be paid under that provision of the law which authorized the State Auditor to draw warrants on the treasury for all moneys directed by law to be paid out of the treasury to public officers, or for any other object whatever, as the same became payable. "This subdivision," the court holds, "when construed in connection with the Act of 1897, clearly authorizes the Auditor of the State to draw his warrant on the Treasurer of the State for the merely incidental expenses incurred from time to time." The constitutional provision of Indiana is that no money can be drawn from the treasury except in pursuance of an appropriation made by law. There the authority to pay the claims was based on the provisions of a general statute. In this case, Act 48 creates a far stronger implication, because it expressly provides that: "Sec. 6. When any claim arising under this act is filed, verified and approved by the Commissioner of the State Land Office, as hereinafter provided, he shall verify the same to the Auditor-General of the State, who shall draw a warrant upon the State Treasurer for the amount thereof, payable to the person, firm or corporation to whom said sum or sums are due."

The construction placed on the statute in the cases of Campbell vs. Com'rs, 118 Ind., 119, and Henderson vs. Com'rs, 28 N. E., 127, shows that there may be an appropriation by implication in addition to a specific appropriation.

Act 48 did not require to provide a specific fund to be known as the "beet sugar fund." It is not necessary to create a fund to effect a complete appropriation. (22 Am. St. Rep., 646.) The fact that such fund was provided (Sec. 7) for the first $10,000 raised under said act for compensation, and the excess for 1897 and 1898, did not restrict the effect of such appropriation as was carried by implication in said act.

The purposes of Sec. 7 must be read in the light of the purposes and provisions of the entire section, which are that the Auditor-General should incorporate a beet sugar bounty tax in the tax rolls of 1897 and 1898, which taxes are to a very large extent received and paid over to the State treasury after the 1st of January of the following calendar years, and whatever amount the bounty for the years 1897 and 1898 should exceed the ten thousand, money should be drawn out of the State treasury. Now, this provision, of course, taken in connection with the appropriation bill and the bill providing for taxation, must have referred to the fiscal year, and the bounty for which the order in this case is asked to be drawn was

earned, and the claim therefor presented during the fiscal year of 1898, so that aside and apart from an appropriation by implication and without considering the provisons of Act 263, here is a specific appropriation for the moneys necessary to pay this claim in the original act, which has heretofore been recognized and acted upon by the Auditor-General.

The act was not limited as to the amount appropriated except as provided by the sum agreed to be paid as compensation. Sec. 3 provides that the act shall have effect for seven years. Sec. 7, while providing for an appropriation of a specific sum, does not limit or qualify the effect of the further appropriation raised by implication by the terms of said act.

In People vs. Goodykoontz, 22 Colo., 507, an act establishing the office of steam boiler inspector and fixing salary therefor, payable as the salary of other State officers, was held to constitute an "appropriation" of such amount in compliance with the constitutional requirement that no money should be paid out of the treasury except upon appropriations made by law.

As to Act 263, Laws of 1889, in Durritt vs. Buxton, 63 Ark., 397, it is held that where the County Court levies a special tax to build a court house, the money arising from the collection is an appropriation for the purpose for which it was levied, within constitution 1874, article 16, section 12, providing that no money shall be paid out of the treasury until it shall be appropriated by law.

The amount due relator had been determined in a lawful way. He, therefore, had the right to demand the order of the Auditor on the Treasurer to pay this claim, and it was the duty of respondent to issue it.

13 Utah, 108.

The power of the Legislature is plenary, being subject only to the constitutional provisions. There are no provisions in the constitution that render essential the establishment of a special fund, or the legislative obedience to the general method of bookkeeping that may be adopted by the departments of administration of the State's affair. The essentials of a complete appropriation are embraced where there is a means of determining the amount due by proper officers, and the raising of the amount required therefor is provided for, or where there is a designation that such payment be made out of the general fund.

The inclusion in Act 263, Laws of 1899, of the amount of relator's claim, is a practical construction of Act 48,

Acts of 1897, showing that the Legislature in making said appropriation construed it as being in payment of the claim which was due as compensation under the terms of the Law of 1897.

See Pacific Coast S. S. Co. vs. U. S., 33 Ct. Cl., 36.

In Cutting vs. Taylor, 3 So. Dak., 11, the Court said: "We apprehend that an appropriation law is to be construed under and by the same rules as other legislation. The primary object in the construction of any statute is to discern the object of the Legislature in making it. When, therefore, the territorial Legislature directed, as in Section 3 of said Act, that "the Auditor * * * shall issue and deliver to the treasurer in each city, town, etc., his warrants upon the territorial treasurer for an amount equal to two per cent of the premiums received upon policies issued upon property in any part of such city, town, etc., and such warrants shall be paid by the territorial treasurer * * * upon presentation thereof," there can be no doubt that such legislation was intended to and did constitute a valid appropriation under the law as it then was." On page 950 the Court said: "We are disposed to consider it an open proposition on the part of the State to the various fire companies, which, when accepted and acted upon, as in this case, has at least sufficient of the element of a contract to justify its recognition by the State, and an appropriation to redeem its promise."

See also State vs. Hipple, 7 So. Dak., 234.

In Town of Higate vs. State, 7 At., 898, the Constitution of Vermont provides that "no money shall be drawn out of the treasury unless first appropriated by act of Legislature." Act No. 11, Laws of 1884, granting aid from the State to an excessively burdened town as to its highways, made no appropriation for that purpose, but directed the Auditor to draw orders on the State Treasurer for the amounts required by the judgment of the court against the State, rendered under the Act. At the same session a general appropriation act was passed, one section of which appropriated money to pay "such demands against the State as may be allowed by the Auditor of Accounts." Held, that this was an appropriation of money to pay said orders, within the contemplation of the constitution.

Third. Should the Court sustain the relator's claim on the ground that the State havng contracted to pay the compensation would be held bound to pay from the moneys

appropriated, as hereinbefore contended, then it is submitted that relator's case is established.

However, should the Court require proof, it is contended:

(First) That the facts of which the Court takes notice judicially, prove the fact of appropriation.

(Second) That the evidence set forth in paragraph 6 of relator's petition is admissible and proves it.

(First) The Court, in construing the acts making appropriation, can take judicial notice of the facts material. The Attorney-General, in Osborn, Commissioner, vs. Wabash R. Co., 123 Mich., 689, doubtless adopted that procedure and availed himself of the report, etc., filed in the office of the Railroad Commissioner.

In the construction of these acts, the prime object is to ascertain and carry out the intention of the Legislature. As was said in City of Evansville vs. Summers, 108 Ind., 189 at page 82: "The chief thing to be explored is the intention. This the judiciary is to seek in the history of legislation, in the objects contemplated, etc." And in U. S. Freeman, 3 How., 556, at page 565, the Court said: "A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter."

The hisory of the Act 263 would of necessity include that which was properly a general expense of the State government. The Act 48, making the compensation due relator a matter of State expense, is a matter embraced in the history of Act 263.

"The two subjects, 'debts' and 'expenses,' are so germane that a legislative provision for 'a debt' may be constitutionally made under a title expressing a provision for expenses."

Desty, Taxation (Edition 1884), page 434, citing State vs. State Auditor, 32 La. Ann., 89.

Further, this Court in tracing the history of said Act 263 can consult and consider without proof or evidence legislative journals and other records of departments or accountants which were proper to be considered in determing the amount included in said Act 263, Laws of 1899.

See the Pacquette Habana, 175 U. S., 678.

See also Martin vs. Wis., 51 Wis., 407, which holds that the court will take judicial notice of records and papers in the office of the Secretary of State.

Chief Justice Marshall, in 6 Cranch, 307, at page 314, said: "The spirit as well as the letter of a statute must be respected, and when the whole context of the law demonstrates a particular intent in the Legislature to effect a certain object, some degree of implication may be called in to aid that intent."

(Second.) The evidence submitted in paragraph 6 of relator's petition is not offered "to contradict or vary the terms of said act," but to show the particular purposes for which the money raised thereunder should be expended.

Paragraph sixth shows exactly what the Legislature provided for in raising the entire $1,016,602.72 in 1899 and $982,262.00 in 1900. The Auditor-General knows it, and the schedule upon which the Legislature based its action was understood by the people of the State. It was published broadcast in all the papers, was a matter of common knowledge, and is now a matter of public record that the earned bounty due the Michigan Sugar Company was to be paid out of the moneys raised by Act 263. The amount of beet sugar bounty earned by it in excess of the tax of 1897 and 1898 is $42,714.06; the amount remaining unpaid is $24,262.99. It is now in the treasury, put there by the people of the State of Michigan for the purpose of paying the obligation of the State to relator, and the records of the Legislature and the Auditor-General's office prove it. This court is not concerned with the question of the advisability of the legislation or the duty of the Legislature. If it was, we would want to be heard upon the right of relator to the bounty upon which it depended and the justice of paying the money earned which will only extend *towards* making good losses incurred in the public interest.

There is no contention that a single word or sentence in Act 263 should be altered or any meaning attached thereto other than is plainly expressed.

The Auditor-General, by his demurrer, admits the truth of our allegations that the money was raised for the purpose claimed, and contends in the fourth reason given for not drawing the order that if it was contemplated that a portion of the taxes levied in pursuance of said act should be appropriated for such purpose, *it was beyond the power of the Legislature to do so.* Therefore, in addition to question of materiality, we have the question of power squarely presented.

If the Legislature authorized the payment of certain money to a certain person, and there was a statement or claim on file showing what the payment was made for, would this court deny the parties an opportunity to make the proof?

Judge Field, in the case of Ho Ah Kow vs. Nunan, 12 Fed. Cas., p. 252, 6546, said at page 255: "The statements of Supervisors in debate on the passage of the ordinance cannot, it is true, be resorted to for the purpose of explaining the meaning of the terms used; *but they can be resorted to for the purpose of ascertaining the general object* of the legislation proposed."

In U. S. vs. Colier, 25 Fed. Cas., p. 527, No. 14,833, it was held that the facts and circumstances which led to and surrounded the passage of the said Act of March 3, 1847, as derived from the journals of the two houses of Congress and the *documents laid before Congress,* were to be considered in construing the act.

See also Martin vs. Wisconsin, 51 Wis., 407, cited supra.

In construing Act 263, the rules of construction fully authorize the court to ascertain the intent of the Legislature and to give it effect. In Green vs. Graves, 1 Doug. (Mich.), 354, the court held: "Where the words are not explicit, the intention is to be collected from the occasion and necessity of the law."

And in the leading case of the People vs. Utica Ins. Co., 15 Johns, 359, at pages 380-1, the Court gave the following rule of construction: "Such construction ought to be put upon a statute as may best answer the intention which the makers had in view. And this intention is sometimes to be collected from the cause or necessity of making the statute, and sometimes from other circumstances; and whenever such intention can be discovered, it ought to be followed with reason and discretion, in the construction of the statute, although such construction seems contrary to the letter of the statute. * * * And such construction ought to be put upon it as does not suffer it to be eluded."

In People vs. Lacombe, 99 N. Y., 43, the Court, referring to these rules, said: "While the rules stated are specially applicable in considering the phraseology, they may also be invoked when several statutes are passed relating to the same subject."

Such a construction as the Attorney-General contends for would not only suffer the statute to be eluded, but would defeat the legislative intent, besides leaving the money which was intended to pay relator's claim in the State treasury, and depriving relator of the compensation which the State agreed to pay.

Now that it has been demonstrated that sugar beets may be successfully raised in Michigan, with the law authorizing the payment of bounty still unrepealed, with the money raised by taxation for this purpose and in the treasury, we are told by the State of Michigan that the law is unconstitutional, notwithstanding the bounty has been earned, and in an exactly similar case The People vs. Board of State Auditors, 9 Mich., 327, the right to the payment of an earned bounty was sustained by the Supreme Court of Michigan.

The rule that the Supreme Court of the United States will follow the State Court in construing its constitution does not apply where a right is involved under the Constitution of the United States; and the provision of the Constitution of the United States, which we contend is involved here, is that the State of Michigan, by virtue of the decision of its Supreme Court, attempts to deprive the relator of its property without due process of law.

The Supreme Court of Michigan did not expressly overrule their decision in the case of the People vs. Board of State Auditors, cited supra, where they held that the salt bounty, when earned, was a vested right, therefore it was property. They sought to distinguish the cases, saying in their opinion in this case, referring to the two salt bounty cases on page 679, 124 Mich.:

"From an examination of the cases referred to, it is evident that the constitutionality of the salt bounty act was not raised or passed upon."

They say further on page 682:

"But it has been held several times in this State that an unconstitutional statute is a statute only in form, and lacks the force of law, and is of no more saving effect to justify action under it than as though it had never been enacted."

If the rule contended for applies here that this court will follow the decision of the State Court, which decision shall it follow? Did the Supreme Court of Michigan enforce payment of the salt bounty under an unconstitutional law because its unconstitutionality "was not raised or passed upon?" If the one is unconstitutional, the other was. Both were passed under the constitution of 1850. We submit the first decision is the better law.

We do not agree that there is any such binding rule in this Court. The main contention of the Attorney-General before the Supreme Court of Michigan was that the case there was ruled by the People vs. Salem, 20 Mich., 452, and it is upon that case that the case at bar was decided in the Supreme Court. But the case of the People vs.

Salem is not the law and never has been the law in this Court. In the case of Pine Grove Township vs. Talcott, 86 U. S., 666, on page 677, this Court said: "It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow these adjudications (People vs. Salem, 20 Mich., 452, and Bay City vs. State Treasurer, 23 Mich., 499). We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion (by Mr. Justice Graves) in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two, it is believed their validity has been sustained by the highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them.

As in that case, so in this, the Supreme Court of Michigan had compelled the payment of the salt bounty under a law which it now says was unconstitutional, and which it intimates would have been held unconstitutional when it was decided if the question had been raised. The Legislature asserted by its act and in the details it prescribed, that in offering the bounty the State tendered a contract to anyone who would accept it, and agreed to pay to such as would earn it. Other departments of the State Government, namely, the State Land Office, had supervised the operation of the law and verified the demand of the Legislature. In the case of Taylor vs. Ypsilanti, already cited, and determined by this Court, October term, 1881, the Court, referring to Talcott vs. Township of Pine Grove, said: that it was determined in favor of the plaintiff in the Circuit Court of the United States for the Western District of Michigan, the question being on the constitutionality of the act of March 26th, 1869, the same that was in question in People vs. Salem. That Court, the Circuit and District Judges concurring, declined to follow the case of People vs. Salem, upon the ground, among others,

that the act was valid under the laws of Michigan, declared and acted upon by all the departments of the State Government at the time of its passage, as under the principles announced in this Court and in the highest Courts of most of the States. The judgment was affirmed in this Court upon a writ of error, in the October term, 1873. "After adverting to the principle that a statute was not to be pronounced void unless the repugnancy to the constitution be clear, and the conclusion that it exists, this Court, speaking by Mr. Justice Swayne, affirmed the judgment, holding the act to be consistent with the constitution of Michigan.

Ry. Co. vs. Otoe, 16 Wall., 667.
Olcott vs. Supervisors, 16 Wall., 678.

Under the circumstances it was said that we could not yield to the authority of the decisions of the State Court without abdicating the performance of one of the most important duties with which this tribunal is charged. The Court said further in that case, on page 71: "The sound and true rule (said Mr. Chief Justice Taney in Ohio Life Insurance Company vs. County Treasurer, 16 How., 416-432) is that if the contract when made is valid by the laws of the State as then expounded by all the departments of its government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent act of the Legislature of the State or decision of its courts altering the construction of the law."

The case of Pine Grove vs. Talcott was affirmed in the case of Hall vs. Wisconsin, 103 U. S., on page 8, where in a case similar in principles to the one at bar, the Court said: "The question raised by the record is within our jurisdiction. In the exercise of that jurisdiction in such cases this Court is unfettered by the authority of State adjudications. It acts independently and is governed by its own views."

Pine Grove vs. Talcott, cited above, has also been followed in Burgess vs. Seligman, 107 U. S., on page 34.

The Constitution of Michigan, Art. XIII., Sec. 11, provides:

"The Legislature shall encourage the promotion of intellectual scientific and agricultural improvements; and shall as soon as practicable provide for the establishment of an agricultural school, * * * and may make the same a branch of the University for instruction in agriculture, and the natural sciences connected therewith, and place the same under the supervision of the regents of the University."

Surely the article is as broad a grant of power as was needed to authorize the Legislature of Michigan to pass the sugar bounty law.

How will the Legislature "encourage" agricultural improvements? The constitution points out one thing it shall do in addition to encouraging agricultural improvements, i. e., "shall as soon as practicable provide for the establishment of an agricultural school." A school was established. (Act 130, Laws of 1855; C. L. 1897, Sec. 1844.) Ever since then the Legislature has gone on making appropriations for the agricultural school at each session.

It has established a State Board of Agriculture.

Provided for the publication of knowledge derived from agricultural experiments.

Exempted from taxation the property of agricultural societies.

Authorized the levy of a general tax of not more than one-tenth of a mill on the dollar on the taxable property of the county whose board of supervisors may order it, for the benefit of an agricultural society which has itself raised $100.

The State collects this agricultural tax now, and has done so for the past fifty years, and the Supreme Court has sustained the validity of the tax.

Silsbee vs. Stockle, 44 Mich., 565.
Boyce vs. Aud. General, 90 Mich., 318.
Harding vs. Bader, 75 Mich., 321.

The money so raised may be given for premiums to trotting and running horses at fairs or regularly appointed meetings.

C. L. 1897, Sec. 11396.

In 1881 the Legislature authorized a bounty of $2 a hundred pounds for merchantable sucrose sugar manufactured from sugar cane, cornstalks or beets grown in the State of Michigan, yielding 80 per cent of crystalized sugar, etc.

The act expired in 1886. We are not aware that anything was ever earned or paid under it.

In the main case relied upon by the defendant, that of People vs. Salem, 20 Mich., 452, it was held that neither the State nor its municipal creations could use public money for building a railway. In Bay City vs. State Treasurer, 23 Mich., 499, in following the Salem case, the court said that a railway was a work of internal improvement contrary to the express provisions of the constitution. Thomas vs. City of Port Huron, 27 Mich., 320, and Dodge

vs. VanBuren Circuit Judge, 118 Mich., 189, follow this case. Attorney-General vs. Pingree, 120 Mich., 550, reaffirmed the doctrine that the State could not engage in a work of internal improvement, under Article XIV., Section 9, of the Constitution. The latter was the case when it was attempted to have the City of Detroit buy and operate a street railway system.

But the granting of a bounty for the production of beet sugar is not a work of internal improvement. Internal improvements have a well-defined meaning, and are applied to roads and bridges, railroads, improvements of rivers for purposes of navigation, etc. The term does not apply to the erection of State buildings, the exercise of the police power of the State, or general State purposes.

In Section 45, Article IV., of the Constitution of Michigan, the Legislature has the power to appropriate public money and property for private purposes if a two-thirds majority vote for it. The section in full is:

"The assent of two-thirds of the members elected to each house of the Legislature shall be requisite to every bill appropriating the public money or property for local or private purposes."

And in a recent case, Allen vs. Board of State Auditors, which involved a mere donation of public money, it was held bad by the Supreme Court, not because the State did not have the power to give, but because the law had failed to receive the required vote. The court held that a donation of money for private purposes, in that case compensation to a man who had been unjustly convicted of a crime, could only be carried by a two-thirds vote.

Bounties have been sustained in other States under similar provisions of their State constitution. See Institute vs. Henderson, 18 Col., 98, on page 106, where no objection was made to an act to encourage the planting of trees upon the roadsides and along the irrigating canals, etc., on the score of the bounty provided thereby. In Kansas the sugar bounty has been sustained. See Cole vs. First National Bank, 56 Kas., 571.

The great Napoleon said:

"Agriculture is the soul, the foundation of all national prosperity."

Montholon, 2, 304.

The beet sugar bounty originated with him and a recent English paper says:

"NAPOLEON'S SUGAR BOUNTY HAS IMPAIRED ENGLAND'S REFINING INDUSTRY.

One of the great staple trades of old time in England—a trade which helped largely to build up the fortunes of Bristol and Greenock, and even of London—was the refining of raw sugar. The industry has now gone, from the same cause which has turned the colonial plantations into waste places—the European sugar bounties.

At Bristol there were five refineries at work a few years ago; to-day there is only one. At Greenock in 1884 there were 16 refineries; in 1900 two. Statistics of a similar kind might be quoted in respect to London, to Dublin, to Liverpool and other towns. Glance only at the change which 16 years have wrought. In 1884, out of a total consumption in this country of 1,050,000 tons of refined sugar British refineries supplied 800,000; to-day, out of a total consumption of 1,500,000 tons, our refineries supply only 600,000 tons. In 1884 we refined 80 per cent of the total consumption. Had we kept that proportion we should now be refining 1,000,000 tons a year.

A century ago Napoleon conceived the idea of growing beet sugar in Europe for the sake of destroying the wealth of England's famous West Indian colonies and of injuring the home refining industry, which contributed to the wealth and therefore the power of the nation. That was the origin of the bounty system."

The relator relied in good faith on the law of 1897 and earned the bounty. The State owed a moral obligation which it had a right to pay, and its provision for that purpose was warranted by the law and was eminently proper to be made. The case of United States vs. Realty Company, 163 U. S., 427, we think, is conclusive on this subject. In that case, while not passing directly upon the subject of whether the bounty of two cents a pound allowed by the McKinley Act of 1890, was constitutional, this court held that, inasmuch as the beneficiary (a sugar planter in Louisiana) had relied upon that act and earned the bounty, Congress had a right to recognize the moral obligation and pay the money thus earned. This was done by a provision in the Sundry Civil Bill, providing for this payment. It was needless to decide at that time whether the McKinley bounty of two cents a pound was constitutional or not, for the reason that that bounty had been repealed by the Wilson Tariff Law of 1894. In the case of Allen vs. Smith, 173 U. S., 389, this court said, on page 394, referring to

the act of March 2nd, 1895: "There was a further clause (under which the bounty in this case was paid) to the effect that there should be paid to those producers who complied with the provisions of the previous bounty law of 1890, by filing an application for license and bounty thereunder required prior to July 1, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 20, 1894, and ending June 30, 1895, both days inclusive. The constitutionality of this act was affirmed by this court in United States vs. Realty Company, 163 U. S., 427."

We respectfully submit that the case of United States vs. Realty Company is conclusive of the relator's right in this case. The bounty law having been passed and the bounty earned, and the Legislature having appropriated the money to pay it, it was the plain duty of the Auditor-General to draw the warrant. The State may repeal the bounty law, but it has not seen fit to do so. The wisdom of granting the bounty has been abundantly justified, and we can say of the bounty offered in this case, as this court said in the Realty Company case: "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered, or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized. To grant a bounty irrespective altogether of these considerations would be an act of pure agrarianism; and to determine who is entitled to the benefit of the bounty is but little more than to determine who has rendered the consideration."

Respectfully submitted,

THOMAS A. E. WEADOCK,
JOHN C. WEADOCK,

Attorneys for Plaintiff in Error.

Supreme Court of the United States

THE MICHIGAN SUGAR COMPANY,
Plaintiff in Error,

vs.

ROSCOE D. DIX, Auditor General of the State of Michigan,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

The Legislature of the State, at its session in 1897, passed an act popularly known as the beet sugar bounty act. The provisions of this act which are material to the matter under discussion are:

> "Sec. 1. There shall be paid out of the State Treasury to any person, firm or corporation engaged in the manufacture in the State of Michigan, of sugar from sugar beets grown in the State of Michigan, one cent per pound upon each and every pound of sugar so manufactured under the conditions and restrictions hereinafter provided."

Another material provision is that making an appropriation for 1897 and 1898 to pay the bounty created by section one. Ten thousand dollars was appropriated, and a tax of five thousand dollars was authorized to be incorporated in the State tax for each of the years 1897 and 1898.

The following provision was also added:

> "Provided, that if the amount of bounty shall exceed the amount of ten thousand dollars for the years eighteen hundred and ninety-seven and eighteen hundred and ninety-eight, that the deficit be paid from the general fund not otherwise appropriated."

This act received 57 votes in the House (see House Journal, p. 825), but was amended in the Senate; the House concurred in the amendment, and on final passage the bill, as amended, received 60 votes. So that at no time did the bill receive a two-thirds vote of the House. The act was approved March 26, 1897.

The plaintiff in error is a corporation, and was organized in December, 1897, after said act went into effect. In the fall of 1898 it commenced the manufacture of beet sugar, and on December 2 and on December 29 presented claims for bounty amounting to $28,451.07, which were duly paid by the state. Ten thousand dollars of said claim were paid out of the fund raised and appropriated for that purpose, and the remainder, $18,451.07, out of the general fund. So that all the bounty claimed to have been earned for the years 1897 and 1898 apparently was paid.

Note.—Inasmuch as the Supreme Court of the State of Michigan takes judicial cognizance of the Legislative Journal of the Legislature the same as it would of a state statute, we have assumed that this court will do the same. Otherwise this court would not have before it the same information that was before the state court. At all events, counsel for plaintiff in error agree that we may incorporate in our statement here the one made before the state court.

At the session of the legislature of 1899 several appropriation bills specifically providing for further appropriations for beet sugar bounty were introduced and considered, but were defeated.

One—House bill No. 933, file No. 231—was entitled, "A bill to make an appropriation for the payment of claims

arising under the provisions of Act No. 48 of the public acts of 1897, entitled, 'An act to provide for the encouragement of the manufacture of beet sugar, and to provide a compensation therefor, and to make an appropriation therefor', approved March 26, 1897."

This bill provided for a bounty of one cent per pound, and made a specific appropriation of $400,000 for the years 1899 and 1900 to pay such bounty. But the bill failed to become a law.

In a message to the legislature, the Governor called attention to an opinion of the Attorney General (dated June 2, 1900), that the proposed legislation, as well as that of 1897, upon the subject, was unconstitutional. An attempt was then made in another bill to fix a bounty of one-half per cent per pound, and to make a specific appropriation of $100,000 for the two years mentioned. This was House bill No. 277, and was a bill "to amend act No. 48 of the public acts of 1897." It failed to pass.

Other bills were introduced covering the same subject matter, but they failed to pass.

Thus it appears that the Legislature of 1899, whenever its attention was called to the subject by the title of any bill, refused to make any appropriation or to recognize any obligation to pay sugar bounties.

But it is claimed, and it is a fact, that the same Legislature did pass an act—No. 263—the title of which is as follows: "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government; salary of the State officers; expenses of the State departments and expenses of the Legislature for the years eighteen hundred ninety-nine and nineteen hundred."

This act, it is claimed, provided for a tax to cover bounties to manufacture beet sugar, although there is nothing in the title nor in the body of the act nor in the legislative journals to show any such thing.

It is alleged in the petition, however, that a committee of the House of Representatives caused to be made a statement showing the different amounts necessary to be raised; and it is claimed that in this statement was an estimate for an excess of bounty over the tax previously raised, amounting to $42,714.06, and a further estimate of the amounts needed for the years 1899 and 1900, being $50,000 for 1899 and $150,000 for 1900. But it is not claimed that any such thing appears anywhere in the Legislative Journals or in the act itself. And in fact, there is no such record.

This portion of the petition was demurred to, as an attempt to vary the terms of the act, and also that the act does not amount to an appropriation for a beet sugar bounty.

It may be noted that the act of 1897 expressly limited the appropriation and the tax therefor to the years 1897 and 1898.

Under the dates of December 2 and 29, 1898, as we have already stated, the plaintiff in error presented its claim for bounty earned, amounting to $28,451.07, which presumably covered all such claims to the end of the year 1898. It appears, therefore, that the claims now presented by plaintiff in error are for bounties alleged to have been earned since the beginning of the year 1899, and for which no appropriation has been made nor taxes levied to pay such bounties, unless it can be said that act No. 263 of the acts of 1899 so provides.

The amount claimed is $24,262. The Auditor General refused to draw his warrant for the amount claimed, and assigned two reasons as ground for refusal:

First: The act of 1897 providing for a beet sugar bounty is in conflict with the constitution of the State.

Second: No appropriation to pay such bounty has been made; therefore there are no funds which can be lawfully used to pay it.

These were the questions presented to the State Supreme Court, and both were there decided adversely to the plaintiff in error. We think, therefore, that the case falls within that line of decisions of this court where it holds itself bound by the decision of the State court.

Proposition I.

The decision of the Supreme Court of the State of Michigan that the act of 1897 providing for a beet sugar bounty is in conflict with the Constitution of the State and its decision that the Legislature of 1899 made no appropriation to pay sugar bounties should control the case here.

It seems to us that very little need or can be said on this proposition. The doctrine of the Michigan Court as laid down in this case was promulgated more than thirty years ago, and has been consistently followed ever since.

People vs. Salem, 20 Mich., 452.
Bay City vs. State Treasurer, 23 Mich., 499.
Anderson vs. Hill, 54 Mich., 477.

Davis vs. Bd. of Supervisors, 64 Mich., 404.
Dodge vs. Van Buren Judge, 118 Mich., 189.
Atty. Gen. vs. Pingree, 120 Mich., 550.

So that the decision in the case at bar is no new departure. The Court has not allowed people to be misled on the subject.

When Act 48 of 1897 was enacted it was squarely in the face of the Constitution as it has been construed for nearly a third of a century. Does it fall short of absurdity to assert that such an enactment constitutes a contract?

If, under such circumstances as are here presented, the construction of a State Constiution by the State Court may be reviewed by this Court, what is there left of independent State judiciary?

With regard to the question of whether there was an appropriation to pay beet sugar bounties under Act 263 of 1899, we call attention to the constitutional provision bearing on the subject. Sec. 5, Art. XIV., is as follows:

> "No money shall be paid out of the treasury except in pursuance of appropriations made by law."

Our Court said (see p. 17, Record): "Here no specific appropriations made by the Act of 1899, *by which the sugar bounties could be paid, and the Legislature has not recognized the relator's claim.*"

Will this Court review this construction of the State statute; if so, what may it not review?

In the case of Elmwood vs. Marcy, 92 U. S., 289, at page 294, this Court said:

> "We have always followed the highest Court of the State in its construction of its own Constitution and laws. It is only when they have been construed differently at different times that, in cases like this, we have adopted as a rule of action, the first decision and rejected the last. This has been done on the ground that rights acquired on the strength of the former decisions ought not to be lost by a change of opinion in the Court. *But where the construction has been fixed by an unbroken series of decisions, the federal courts accept and apply it in cases before them.* If a different rule were observed it is not difficult to see that great mischief would ensue."

In the case of Burgess vs. Seligman, 107 U. S., 20, it was said:

> "Since the ordinary administration of justice is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the States, and have the effect of law and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and statutes. Such established rules are always regarded by the federal courts no less than by the State courts themselves as authoritative declarations of what the law is. But when the law has not been thus settled it is the right and duty of the federal courts to exercise their own judgment as they always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into and rights have accrued thereon under a particular state of the decisions, or where there has been no decision of the State tribuanls, the federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State court after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the federal courts will lean towards an agreement of views if the question seems to them to be balanced with doubt."

We cite also:

Rowan et al. vs. Runnels, 5 Howard, 134, at p. 139.

Ohio Life Ins. Co. vs. Debolt, 16 Howard, 416, at p. 432.

National Bank vs. Ottawa, and Post vs. Supervisors et al., 105 U. S., 667.

South Ottawa vs. Noah C. Perkins, and Supervisors vs. Kendall, 94 U. S., 260.

East Oakland vs. Skinner, 94 U. S., 258.

Without referring to the many other cases decided by this Court we submit that the case at bar is clearly within the principles laid down in the cases from which we have quoted.

II.

The act of 1897 providing for a beet sugar bounty is in conflict with the Constitution of the State of Michigan.

It would seem to be as trite as the multiplication table that the very nature of taxation requires that it should be levied for a public purpose. This will, no doubt, be conceded.

It will also be conceded that the act providing for a sugar bounty means taxation.

So that the question to be solved is:

Can such taxation be deemed to be for a public purpose? We are well aware that the purpose of taxation is not limited to the absolute needs of an existing government. We are also aware that, generally speaking, it is for the Legislature to determine what are the public needs and what best subserves the prosperity and well-being of society.

It is doubtless with these general principles in mind that counsel say that "The State by the Legislature and Executive, has decided that its *public interest* demands that the manufacture of beet sugar from sugar beets grown in this State shall be encouraged, etc."

While it is no doubt true that the Legislature must first determine and pass upon such questions as these, it must be equally true that it cannot transform taxation for a private purpose into taxation for a public purpose by a mere declaration that it is for a public purpose. Where it is clear that the taxation is in fact for a private purpose, no amount of juggling with words can make it otherwise.

The argument that the incidental benefit to the public which is derived from the establishment of a new private industrial enterprise renders the latter a public matter for which taxes may be levied, is an old one and has often been made; and when made, almost uniformly rejected by the courts.

It was long ago held that a state legislature was not omnipotent, and that all the branches of our government, state and national, are limited by the nature and fundamental principles of republican government, as well as by constitutional limitations.

Calder vs. Bull, 3 Dall. (U. S.), 386.

The learned justice who rendered this opinion used this language:

> "The obligation of a law in governments established on express compact, and on republican principles must be determined by the nature of the power on which it is founded.
>
> "A few instances will suffice to explain what I mean. A law that punishes a citizen for an innocent action, or in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man a judge in his own cause; *or a law that takes property from A and gives it to B.* It is against all reason and justice for a people to entrust a Legislature with such powers; and therefore it cannot be presumed that they have done it. The genius, the nature and the spirit of our state governments amount to a prohibition of such acts of legislation; and the general principles of law and reason frobid them."

There is much more equally emphatic language in the opinion, which can at all times be read with interest.

The question which is here under discussion arose in the case of—

> Loan Association vs. Topeka, 20 Wall. (U. S.), 655.

The legislature of Kansas authorized certain cities, of which the city of Topeka was one, to issue bonds for the purpose of building bridges, aiding railroads, water power or other works of internal improvement. Under this supposed authority the city of Topeka issued bonds to the amount of $100,000, to the King Wrought Iron Bridge Manufacturing and Iron Works Company, of Topeka, "to aid and encourage that company in establishing and operating bridge shops in said city of Topeka."

The broad question of legislative power was discussed and decided. It was held that a statute which authorizes a town to issue its bonds in aid of the manufacturing enterprise of individuals is void, because the taxes necessary to pay the bonds would, if collected, be a transfer of the property of individuals to aid in the projects and gain of others, and *not for a public use in the proper sense of that term.*

The language is so strong that we quote liberally:

"It must be conceded that there are rights in every free government which are beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is, after all, but a despotism of the many—of the majority, if you choose to call it so; but it is nevertheless a despotism. * * * The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact would not exist, and which are respected by all governments entitled to the name. * * * To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored indivdiuals, is none the less a robbery because it is done under the forms of law and is called taxation; this is not legislation; it is a decree under legislative forms. Nor is it taxation. * * * We have established, we think, beyond cavil, that there can be no lawful tax which is not laid for a public purpose. It may not be easy to draw the line in all cases so as to decide what is a public purpose in this sense and what is not. * * * But in the case before us in which the towns are authorized to contribute *aid by way of taxation to any class of manufactures,* there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the inn-keeper, the banker, the builder, the steamboat owner, are equally the promoters of the public good and equally deserving the aid of citizens by forced contributions. No line can be drawn in favor of the manufacturer which would

not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

The strongest argument in favor of this kind of legislation which we remember to have seen is that of Mr. Benjamin R. Curtis, in a case where the facts certainly appealed to the court to relax the rule, if it could possibly be done with safety.

The great "Boston fire" had destroyed the business portion of the city of Boston, and the tax roll upon which the State collected taxes was lessened by millions of dollars. The incidental effects were well described by Mr. Curtis, whose language we quote further on.

The State Legislature undertok to authorize the city of Boston to issue bonds to the amount of $20,000,000, to raise money to loan the owners of land, the buildings upon which were destroyed by the fire; the object being to encourage the speedy rebuilding of the burned district. It need not be stated or argued that the incidental benefits of such rebuilding which would inure to the city of Boston and the State at large would have been very great.

Mr. Curtis presented the following:

"The main questions in this case are these: Can there be such a destruction of property by fire in the capital city of the State, the main seat and center of its wealth, industry, commerce and business, the prosperity and advance of which are so intimately connected with its own, that the one cannot be touched without seriously affecting the other, as to justify the State in lending money to those whose property has been destroyed, upon ample security, to enable them to restore the city to its former condition? Can there be so general a calamity and destruction by fire, in a city owning more than a third of the taxable property of the State, and paying more than a third of the taxes for public purposes, as would justify the State, upon prudential considerations, in lending a helping hand for the purpose of preserving her own resources and the mainsprings of her own prosperity? Can there be a destruction of property in such a city, by fire, so serious and calamitous as to interfere with the business of the people, the interests of labor, and the finances of the whole community, to such a degree as to justify the Legisla-

ture in bringing to the aid of the sufferers a loan from the state, to avert some, at least, of the great public loss and suffering that would be occasioned by such a calamity?

"The statement of these questions carries with it their answer. There might be so general a calamity, produced by the destruction of property by fire in Boston, as to require a loan of money by the State as a measure of self-preservation.

"The primary object of the statute is not to benefit and aid private persons. Its purpose and end are strictly of a public nature; to restore and increase its taxable property and resources of the State; to prevent and guard against the great evils and losses arising from so great and general a calamity in embarrassing business and industry, deranging finances, and seriously lessening the wealth and prosperity of a large and most important part of the whole people, and interfering with their comfort, happiness and progress."

The opinion of the Court is a very full and exhaustive one. We quote from it:

"The power to levy taxes is founded on the right, duty and responsibility to maintain and administer all the governmental functions of the State, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service, or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may be necessary. It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to

which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

"The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than force."

Lowell vs. Boston, 111 Mass., 454, at pp. 460-1.

We cite the cases of

Central Branch U. P. R. R. vs. Smith, 23 Kan., 745;
The State vs. Osaukee Tp., 14 Kan., 418;

to show that the Legislature cannot make the purpose of taxation a public one by merely declaring it to be so, or by yoking a private to a public purpose.

In the case of

Curtis vs. Whipple, 24 Wis., 350,

it was held that a statute which authorized taxation in behalf of an educational institution was invalid, because the institution was a private enterprise, not under control of the public authorities.

The following language is found on pp. 354-5:

"Nor will the location of the institution at Jefferson and the incidental benefits which may thereby arise to the people of the town, sustain the tax. This is not the kind of a public benefit and interest which will authorize a resort to the power of taxation. Such benefits accrue to the people of all communities from the exercise in their midst of any useful trade or employment, and the argument, pursued to its logical result, would prove that compulsory payment or taxation might be made use of for the purpose of building up and sustaining every such trade or employment, though carried on by private persons for private ends, or the purposes of mere individual gain and emolument. That there exists in the State no power to tax for such purposes, is a proposition too plain to admit of controversy. Such a power would be obviously incompatible with the genius and institutions of a free people; and the practice of all liberal governments, as well as all judicial authority, is against it. If we

> turn to the cases where taxation has been sustained as in pursuance of the power, we shall find in every one of them that there was some direct advantage accruing to the public from the outlay either by its being the owner or part owner of the property or thing to be created or obtained with the money, or the party immediately interested in and benefited by the work to be performed, the same being matters of public concern; or because the proceeds of the tax were to be expended in defraying the legitimate expenses of government, and in promoting the peace, good order and welfare of society."

A case similar to the foregoing is

Jenkins vs. Anderson, 103 Mass., 94.

The following question was submitted to the Supreme Judicial Court of Maine:

> "Has the Legislature authority under the Constitution to pass laws enabling towns by gifts of money or loans of bonds, to assist individuals or corporations to establish or carry on manufacturing of various kinds, within or without the limits of said towns?"

The answer was in the negative.

Opinion of Judges, 58 Maine, 590.

We quote the following from the opinion in answer to some of the suggestions of counsel for plaintiff in error in this case:

> "The general benefit to the community resulting from every description of well-directed labor is of the same character whatever may be the branch of industry upon which it is expended. All useful laborers, no matter what the field of labor, serve the State by increasing the aggregate of its products—its wealth. There is nothing of a public nature any more entitling the manufacturer to public gifts than the sailor, the mechanic, the lumberman or the farmer. Our government is based upon the equality of rights. All honest employments are honorable. The State cannot rightfully discriminate among occupations, for a discrimination in favor of one branch of industry is a discrimination ad-

verse to all other branches. The State is equally to protect all, giving no undue advantages or special and exclusive preferences to any."

In the case of Allen vs. Jay, 60 Maine, 124, it seems to us that the Court pointed out one test by which a private can be distinguished from a public purpose. If the business for which the tax is to be levied is under private control and not subject to public control, it must be essentially a private business, and a tax in aid of that business would be for a private purpose.

The Legislature of Missouri provided for a bounty for planting, protecting and cultivating forest trees, to be paid by the county; the law was held to be unconstitutional.

Deal vs. Mississippi Co., 107 Mo., 464.

III.

No appropriation to pay bounties for 1899 and 1900 has been made; and there being no funds which can lawfully be used for such purpose, the writ must be denied.

Counsel for the plaintiff in error have evidently sought to avoid the effect of a determination that the act of 1897 is unconstitutional. In fact, it is said that "it is unnecessary to determine whether act No. 48 of the public acts of 1897 is valid, in order to entitle the relator to the mandamus prayed for."

The facts in the case defeat this position.

Act 48 of 1897 made no appropriation beyond the year 1898. So that when Jauary 1, 1899, arrived, there was no longer any authority to pay out moneys for sugar bounties earned thereafter, conceding the act to be constitutional.

Act 263 of 1899 provided for a tax for four things, viz.: For appropriations not otherwise provided for; salaries of State officers; expenses of the State departments, and the expenses of the Legislature, all for the years 1899 and 1900. There is no appropriation for beet sugar bounties for these two years, unless it be claimed that act 263 itself makes it. But act 263 clearly refers to appropriations made by some other act or acts. So that if act 263 covers any appropriations for beet sugar bounties, it must refer to act 48 of 1897, as there is no other recent legis-

lation on the subject; and that act, as we have shown, made no appropriation beyond the year 1898.

It may be claimed that section 8 of act 48, 1897, creates an obligation to pay a sugar bounty for seven years, and that this is equivalent to an unlimited appropriation for seven years. We can hardly believe that this will be seriously claimed. But if it is, it may be said, first, that this proposition depends upon the constitutionality of act 48; if that act was invalid, there was no appropriation even under the theory suggested. So that if the original act goes down, relators claim goes down with it.

Act 263, as shown by its title, was "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government; salaries of the officers; expenses of the State departments and expenses of the Legislature for the years eighteen hundred and ninety-nine and nineteen hundred." The body of the act provides for the levy of a tax for a certain amount, "to meet the several appropriations made by law wherein no tax is otherwise provided." Nowhere in the act is there any reference to sugar bounties. Several times during the session the Legislature refused to make any specific appropriation for sugar bounties. If there is any presumption from the legislative record, it is that the Legislature did not intend to pay sugar bounties. It certainly fails to show an intention to recognize any equities or moral obligations resting upon the State.

The State Constitution, Sec. 20, Art. 4, proides:

> "No law shall embrace more than one object, which shall be expressed in its title."

Any member of the Legislature of 1899 having voted several times against a specific appropriation to pay sugar bounties and finding none in existing statutes, and knowing that the Constitution requires the purpose of every act to be expressed in its title, would never suspect that in voting to levy a tax "to meet the several appropriations for which a tax is not otherwise provided," he was voting to pay several hundred thousand dollars for sugar bounties.

The question of what constitutes an appropriation was fully and exhaustively discussed in

> Ristine, Auditor General, vs. State of Indiana, and State of Indiana vs. Ristine, Auditor General, 20 Ind., 328 and 345.

But as we have already pointed out, our own court has found that no appropriation for the purpose claimed was made.

Much effort has been made to bring this case within that of United States vs. Realty Co., 163 U. S., 427. In that case it was nowhere asserted that there was any legal claim under the original act of 1890 which could have been enforced. With regard to subsequent legislation, this court simply said:

> "There was enough in the case as presented to Congress upon which to base the assertion that there was a moral and honorable claim upon the public treasury which that body had the constitutional right to recognize and pay."

The Legislature of Michigan has not yet recognized nor attempted to recognize the claim of the plaintiff in error. This fact destroys any similarity between the cases and renders further discussion on this point unnecessary.

Considerable had been said about the moral obligation resting upon the State to pay sugar bounties said to have been earned by comlying with the provisions of act 48 of 1897.

We do not suppose that the act was passed without the knowledge of the agents of the plaintiff in error and it is among the possibilities that some of them were somewhat instrumental in procuring its passage. If they were they did not create any equities in favor of nor moral obligations running to themselves.

We are not inclined to believe that a moral obligation resting upon the State can grow out of an unconstitutional statute passed in the face of a long line of decisions holding such legislation to be invalid.

> "When a statute is adjudged to be unconstitutional it is as if it had never been. *Rights cannot be built up under it;* contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made."
>
> Cooley, Const. Lim., 6 Ed., p. 222.

It is not believed there will be the slightest dispute over this rule laid down by the courts and asserted by the distinguished author just quoted. If it is as though Act 48 of 1897 had never been passed, then there could have been,

on the part of the State, no promise, no inducement. But this reasoning, it is said, is purely technical and does not reach the true merits of the case in hand. We think otherwise. The constitutional limitations on the Legislature were intended for the protection of the people. You may call the one hundred and thirty-two members of the Legislature agents of the people if you will, still they are agents with a written authority beyond which they cannot go and bind their principal either legally or morally. But they are not agents in the ordinary sense of the word. They are public officers, and together constitute a body whose powers, although exceedingly broad, are not without constitutional limit. The people have a right to presume that such limit will not be exceeded. So that when such a body, in defiance of the constitutional direction, seek to take money out of the pockets of one taxpayer and put it into that of another, we submit that the undertaking, in whatever form or shape it may take, does not create any moral or other obligation upon the people of the State.

Had the decisions of the State Court been the other way, and had the plaintiff in error made investments relying upon such decisions, it would have had both a moral and a legal claim which would and ought to be enforced, even if the State Court should see fit to change its views and refuse to enforce it. But no such case is before us. The plaintiff in error ought to have known, and presumptively did know, that if it made investments under Act 48 of 1897, it could never enforce any claim for bounty in the State Courts.

It might speculate, and very likely did speculate, on the probability of being able to collect the bounty without opposition. But such speculation could not give its claim any standing as a moral, and much less as a legal, obligation resting upon the State.

HORACE M. OREN,
Attorney-General of Michigan.

CHAS. D. JOSLYN, Counsel.

Supreme Court of the United States.

No. 199.—October Term, 1901.

The Michigan Sugar Company, Plaintiff in Error,
vs.
Roscoe D. Dix, Auditor General of the State of Michigan.
} In error to the Supreme Court of the State of Michigan.

[April 7, 1902.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was a petition for mandamus filed in the Supreme Court of the State of Michigan by the Michigan Sugar Company against the Auditor General of that State, praying that he might be commanded to draw his warrant or warrants on the treasury of the State in favor of petitioner, for certain amounts alleged to be due to it for bounty earned for beet sugar manufactured from sugar beets raised in the year 1898, in accordance with the provisions of an act of the legislature of Michigan of 1897. Reliance was also placed on an act of 1899 asserted to have made appropriations to pay such bounties. The Auditor General in response to a rule to show cause insisted that the act of 1897 was in contravention of the State constitution, and also that no appropriations had been made out of which the alleged bounties could be paid.

The Supreme Court of Michigan held that the act of 1897 was unconstitutional, and that it could not be and was not helped out by the act of 1899, which made no specific appropriations "by which the sugar bounties could be paid;" and denied the application. 124 Mich. 674. Thereupon this writ of error was allowed; and errors were assigned to the effect that the judgment of the Supreme Court was in conflict with the prohibitions of the Constitution of the United States in respect of "impairing the obligation of contracts;" deprivation of property without due process of law; and denial of the equal protection of the laws.

The petition for mandamus nowhere set up that the State of Michigan had passed any law impairing the obligation of a contract with relator, and nowhere invoked the protection of any provision of the Federal Constitution, nor was any issue in relation thereto raised upon the record.

It is clear that the case did not fall within either the first or second of the classes of cases in which the judgment of a State court may be reexamined under section 709 of the Revised Statutes. The validity of no treaty or statute of, or authority exercised under, the United States was

drawn in question; nor was the validity of a statute of, or an authority exercised under, the State drawn in question on the ground of repugnancy to the Constitution, treaties or laws of the United States, and its validity sustained. And as to the third class, no right, title, privilege or immunity was specially set up or claimed as belonging to relator under the Constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States; and denied.

The Supreme Court of the State did not refer to the Federal Constitution or consider and decide any Federal question. For aught that appears, the court proceeded in its determination of the cause without any thought that it was disposing of such a question.

The rule is firmly established, and has been frequently reiterated, that the jurisdiction of this court to re-examine the final judgment of a State court, under the third division of section 709, cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case here from such court intended to assert a Federal right. The statutory requirement is not met unless the party unmistakably declares that he invokes for the protection of his rights, the Constitution, or some treaty, statute, commission or authority, of the United States. Applying this rule to the case before us, the writ of error cannot be maintained.

Writ of error dismissed.

Mr. Justice BROWN took no part in the decision.

True copy.

Test:

Clerk Supreme Court, U. S.